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PTO/SB/64 (07-06)

Approved for use through 09/30/2008, OMB 0851-0031

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
1644-041

First named inventor: Jerrel L. Whitel

Application No.: 09/638,017

Art Unit: 1723

Filed: 08/14/2000

Examiner: David L. Sorkin

Title: Seed Treater

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ 750.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Amendment and Response and Petition to Revive (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

(Page 1 of 2)

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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08/02/2006 RB1RAS 00000042 09638017

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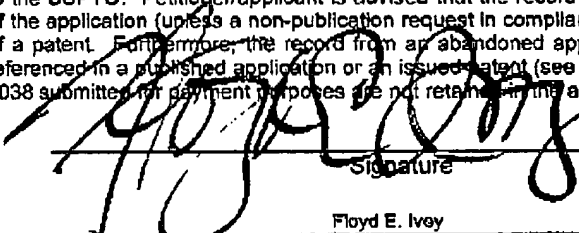
3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

- 4. STATEMENT:** The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(e) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



 Signature

 Floyd E. Ivey
 Typed or printed name

 P.O. Box 6125
 Address

 Kennewick, WA 99336
 Address

August 1, 2006

 Date

 35,552
 Registration Number, if applicable

 (509) 736-3581
 Telephone Number

- Enclosures: ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☒ Other: Amendment and Response to Non-Final December 5, 2001 Office Action

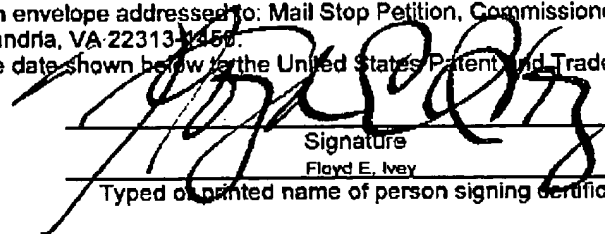
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- ☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

August 1, 2006

 Date



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 Floyd E. Ivey
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REVOCATION OF POWER OF ATTORNEY WITH NEW POWER OF ATTORNEY AND CHANGE OF CORRESPONDENCE ADDRESS	Application Number	09/836,017
	Filing Date	08/14/2000
	First Named Inventor	Jewel L. Whitel
	Art Unit	1723
	Examiner Name	David L. Sorkin
	Attorney Docket Number	1644-041

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I hereby revoke all previous powers of attorney given in the above-identified application.

☒ A Power of Attorney is submitted herewith.

OR

☐ I hereby appoint the practitioners associated with the Customer Number:

☒ Please change the correspondence address for the above-identified application to:

☐ The address associated with Customer Number:

OR

<input checked="" type="checkbox"/> Firm or Individual Name	Lieber, Ivey, Connor, Berry & St. Milette		
Address	P.O. Box 9125		
City	Kennelwick	State	WA Zip 99336
Country	USA		
Telephone	(509) 735-3581	Email	revey@3-olde.com

I am the:

☒ Applicant/Inventor.

☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/95)

SIGNATURE of Applicant or Assignee of Record

Signature *Jewel L. Whitel*

Name Jewel L. Whitel

Date August 1, 2006 Telephone (509) 520-4550

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.20. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 422 and 37 CFR 1.11 and 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FACSIMILE #571 273 8300, FOR EXAMINER
DAVID L. SORKIN, TELEPHONE 571 272 1148,
ART UNIT 1723**

Response 71 pages, Power of Attorney 1 sheet
Drawings 6 sheets, Credit Card form 1 sheet
Petition for Revival 37 CFR 1.137(b) 2 sheets
Total Fax pages 81

Our Ref. No. P-1644-041

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
WHITED

Date: August 1, 2006

Serial No. 09/638,017

Group Art Unit: 1723

Filed: August 14, 2000

Examiner: David L. Sorkin

For: SEED TREATER

By facsimile transmission only 571 273 8300; Original Drawings also by mail

Commissioner of Patents
Office of Petitions
Washington, D.C. 20231

Dear Commissioner:

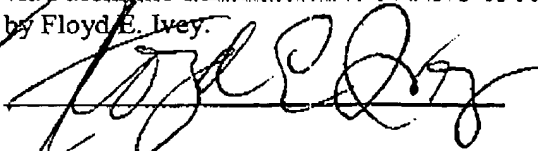
**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 35 CFR 1.137(b)**

**AND
AMENDMENT AND RESPONSE**

Your applicant now files a Request for Continued Examination and an
Amendment and Response which is responsive to the filed a Petition for Revival of an
Application for Patent Abandoned Unintentionally under 35 CFR 1.137(b)

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by Floyd E. Ivey.

Application No. 09/638,017



1 The inventors and applicants now Petitions for Revival of an Application, per the
2 associated PTO/SB/64 Petition.

3 This Petition relates to the non-final Office Action of December 5, 2001.
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1 I. INTRODUCTORY COMMENTS

2 RESPONSE TO EXAMINER'S ACTION OF DECEMBER 5, 2001

3 The Examiner's Action of December 5, 2001, required Election, Amendment of
4 the Drawings, Amendment of the Specification and set forth Objections and Rejections.
5 Your applicant now files a Response to the Office Action of December 5, 2001. The
6 Response is believed responsive to the Non-Final Office Action dated December 5, 2001.

7
8 FEES OWING

9 The applicant respectfully observes that your applicant makes payment of \$750.00
10 for a small entity, with this Petition and via associated PTO 2038 form for payment by
11 Credit Card which is included with this transmission. The Office of Petitions will find
12 PTO 2038 authorization for \$750.00 for Mr. Whited.

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II. ELECTION/RESTRICTIONS

At page 2 of the Detailed Action the Examiner requires Restriction to one of the following inventions under 35 USC 121:

1. Claims 1-17, drawn to a mixing chamber having a rotatable agitator, classified in class 366, subclass 305.

2. Claims 18-20, drawn to a method of treating seed, classified in class 427, subclass 4.

At paragraph 2 the Examiner states "Inventions 1 and 2 are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP 806.05(e)). In this case the apparatus could be used to mixer material other than seed, such as coal particles."

At paragraph 3 and 4 the Examiner states "Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper." And "Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper."

Election: The provisional election with traverse to Group I and claims 1-17 is affirmed.

Traverse: Your applicant has amended Claim 18 as follows:

18. (Currently amended) A method of treating seeds utilizing the apparatus of claim 13 comprising:
adapt[ed]ing the apparatus for use in an elevator which includes a building with an elevated floor having a supply opening therethrough and a space below the

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1 floor for accommodating vehicles for receiving the seeds, compromising,
2 providing seeds to be ~~mixed~~ treated on the elevated floor,
3 providing a self-contained ~~mixing~~ treating unit having a top opening and a
4 bottom opening for flow of seeds therethrough and through the ~~mixing~~ treating
5 unit, and ~~mixing~~ treating the seeds as the seeds flow through the ~~mixing~~ treating
6 unit.

7 Additionally claims 18, 19 and 20 have been amended to eliminate reference to
8 "mixing". As is appreciated from the Specification and Claims, the apparatus of claim 13
9 "treats" particles which are denominated "seeds" in this application and in these claims.
10 As is seen in the Specification and Claims, the particles or "seeds" are coated with a fluid.

11 Your applicant respectfully notes that the preamble of a claim only limits the
12 claimed invention if it "recites essential structure or steps, or if it is necessary to give life,
13 meaning, and vitality to the claim." *NTP, Inc. v. Research In Motion, Ltd.* 418 F.3d
14 1282, 1305-06 (C.A.Fed. Va. 2005); *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*,
15 289 F.3d 801, 808 (Fed.Cir.2002). Thus, the preamble must help to determine the scope
16 of the patent claim to be construed as part of the claimed invention. *Bell Communications*
17 *Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620 (Fed.Cir.1995).

18 Your applicant respectfully contends that the word "seed" in the preamble is not
19 structural and does not limit the claimed invention. Thus any particle to be coated by the
20 structure of claim 13 and the claims from which it depends which necessarily must
21 include the spreader (90) of this invention.

22 Hence your applicant respectfully contends that neither of the conditions of MPEP
23 806.05(e) are met, in light of the amendments, and your applicant requests the Examiner
24 to withdraw the restriction and to allow claims 18-20 to be examined in this application.

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1 **III. DRAWINGS**

2 **Page 3, paragraph 6**

3 At Page 3, para 6, the Examiner objects to the drawings for failing to comply with
4 35 CFR 1.84(p)(4) because reference character "44" has been used to designate both the
5 "central axis" and the "stationary drum". The Drawings have been amended to
6 designate the axis as "43" and the specification has been amended accordingly.

7 At page 3, para 6, the Examiner states that "reference character "60" has been
8 used to designate both the "opening" and "transverse flange" (see fig. 4)". Fig. 4 has
9 been amended to change the "opening" from 60 to 50. Refer to the Specification at page
10 5/lines 23-24 as follows: "The device has a flat, annular top closure plate 48, with a
11 central inlet opening or feed hole 50, surrounded by a ..."

12 At page 3, para 6, the Examiner states that "reference character "106" has been
13 used to designate two different items in Fig. 5;" The Specification at page 8/line 4 states
14 "...vertical radial blades 106...". Accordingly, the lower identifier at the bowl (104) with
15 the "106" identifier has been removed from Fig. 5. The "vertical radial blades 106" is
16 seen at Fig, 5, 9 and 10.

17 At page 3, para 6, the Examiner states that reference character "128" has been
18 used to designate "curved mounting plates" in Figs. 5, 11 and 12 and a "wiper" in Fig.
19 14;" Wiper 128 is illustrated in Fig. 14 and referenced in the specification at pages 11 and
20 12. Curved mounting plate 128 is illustrated in Fig. 5, 11 and 12 and referenced at the
21 specification page 10. The Drawings have been amended at Fig. 5, 11, and 12 to change
22 the curved mounting plate from designation 128 to 127 and the specification at page
23 10/lines 1-6 and lines 18-22 and lines 23-24 have been amended from 128 to 127.

24 At page 3, para 6, the Examiner states that reference character "130" has been

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1 used to designate "a central plate" in Figs. 5, 11 and 12 and a "wiper" in Fig. 14;" The
2 Drawing has been amended at Fig. 5 to change the central plate from designation 130 to
3 131 and the specification at page 10/lines 1-6 has been amended from 130 to 131.

4 At page 3, para 6, the Examiner states that "Reference character "132" has been
5 used to designate "a small flat steel mounting piece" in Figs 14 and an unknown item in
6 Fig. 5;" Fig. 5 illustrates the hogback (76) which is an inverted "V" shaped structure.
7 The designator "132" has been removed from Fig. 5.

8 At page 3, para 6, the Examiner states that "Reference character "142" has been
9 used to designate two different items in Fig. 14 as well as two other items in Fig. 13."
10 The Drawing Fig. 13 has been amended to show "89" in-place of "142" as supported by
11 the Specification at page 14/lines 12-14.

12 At page 3, para 6, the Examiner states that "Also, reference character "46" appears
13 to be used to designate the central axis in Fig. 4, whereas "46" designates a wall
14 according to the specification and other figures." The Examiner is referred to the initial
15 reference character "44" objection at page 3 which the Examiner indicated to designate
16 the "central axis". Please note that the reference in Fig. 4 was changed to "43".

17 The applicant has responded to each numerical character objection addressed by
18 the Examiner at page 3, paragraph 6, by amendment of drawings and specifications or
19 with discussion and respectfully requests the Examiner to accept the amended drawings
20 and to withdraw the objections under 37 CFR 1.84(p)(4).

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1 **Page 3 paragraph 7**

2 At page 3, paragraph 7 the Examiner states that the drawings are objected to as
3 failing to comply with 35 CFR 1.84(p)(5) because they do not include the following
4 reference signs mentioned in the description: "lead-in lines 89" (see page 7, line 16 and
5 page 14, line 12) - The Examiner is directed to the amendment with regard to character
6 142 in Paragraph 6 where character 142 at Fig. 13 was changed to character 89.

7 At page 4 the Examiner notes that "imperforate wall 107" (see page 8, line 17) is
8 not shown. The specification page 8/lines 16-17 demonstrate that the "imperforate wall
9 107" is to be found at Fig. 5 and the Examiner will find "107" added at the bowl structure
10 104.

11 The applicant has responded to each failure to show a numerical character
12 objection addressed by the Examiner at page 3-4, paragraph 7, by amendment of drawings
13 and specifications or with discussion and respectfully requests the Examiner to accept the
14 amended drawings and to withdraw the objections under 37 CFR 1.84(p)(5).

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1 **IV. SPECIFICATION**

2 A. The Specification has been amended as follows re: changes to the drawings

3

4 1. Re: change of numerical identifier 44 to 43 as the axis 43, the Specification at
5 page 5-19 is amended as follows:

6

7 Fig. 1 shows instrumentalities for conveying seed to the device. These may
8 include a conveyor 38, having a terminal chamber 40, with an outlet leading into
9 the seed treater. 10 Further attention is given to this feature, as represented
10 diagrammatically in Fig. 2, which shows a conveyor 38, with other
11 instrumentalities 42, leading thereinto, such as belts, chutes, screws, etc. The
12 particular instrumentalities utilized for carrying seed to the device may be any of
13 various kinds. The 15 seed treater 30, is cylindrical in shape with central axis [44]
14 43 (Figs. 1, 4, 5, 9, 14) (Figs. 1,5) disposed vertically. It includes a stationary
15 drum 44 forming a surrounding wall 46, which has an access door 47. In the
16 description herein, the seed treater is referred to as oriented in that position, i.e.,
17 vertically.

18

19 2. Re: change of designation 60 to 50 re: opening, the following amendment in
20 the Specification at page 5/lines 3-9:

21

22 Fig. 4 shows the means for mounting the device on the ceiling, or the
23 second floor. In this figure the second floor structure 34 is shown, and a hanger
24 means 58 is provided for mounting the device directly on the floor structure. In
25 the hanger means 58 is an opening [60] 50 receiving grain from the outlet end

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1 of the conveyor 38 (Fig. 2) and directing it into the opening 50, in the device.

2
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4 3. Re: change of designation 128 to 127 re: curved mounting plates and change of
5 designation 130 to 131 re: central plate, the following amendment in the Specification:

6 a. at page 10/lines 1-6:

7 together extending diametrically across the drum. It is disposed with the apex of
8 the angle upwardly. At the ends are mounting plates [128] 127, having
9 apertures for detachably mounting on the surrounding wall as shown in Fig. 5. A
10 central plate [130] 131, is 5 mounted across the lower edges of the plates
11 126, on which the lower bearing means 72 is secured.

12
13 B. Amendments to the Specification Responsive to the Examiner's Objections:

14 1. At page 4, paragraph 8, the Examiner states that "The disclosure is objected to
15 because of the following informalities: The reference character inconsistencies discussed
16 above with regard to the drawings must be corrected in the specification as well. See for
17 example page 5, lines 15-17, page 6, lines 7 and 13, and page 10, lines 4, 5, 18 and 19.

18 The Examiner is respectfully directed to the above comments and amendments to
19 the Specification re: amendments pursuant to amendments necessitated by amending the
20 Drawings.

21 2. At page 4, paragraph 9, the Examiner states that "In line 15 of page 8,
22 "fixadly" should read -- fixedly--.

23 Accordingly the following amendment to the Specification is made at page 8,
24 lines 12-14:

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1 The thin mass of grain which was thrown out by the spreader 90, flows
2 down along the wall, and mixes with the chemicals and as it reaches the ;Level of
3 the applicator, the wet mixture then flows into an upper bowl 104 which is ~~fixadly~~.
4 fixedly mounted in the drum. This bowl includes a surrounding annular
5 imperforate wall 107, tapering downwardly to a central discharge outlet opening
6 108, and at its upper end is a cylindrical flange 110, by which it is mounted on the
7 inner surface of the surrounding wall.

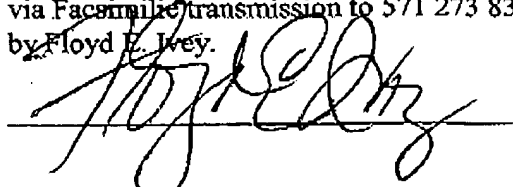
8
9 3. At page 4, paragraph 10, the Examiner states "In line 24 of page 14, "150
10 should read -151-. Accordingly, the following amendment is made to the Specification
11 at page 14, lines 19-25:

12
13 A unit as described above, having a drum in the 20 neighborhood of 40" in
14 length and 24" in diameter, has a capacity for treating grain at the rate of about
15 1500+ bushels per hour or 45+ tons per hour. Any desired capacity may be
16 accomplished by selectively changing the size of the machine. The drive motor
17 [150] 151 is sized to the unit.

18
19 Your applicant has attempted to Respond to every objection to the Specification
20 made by the Examiner and requests the examiner to withdraw the objections and to allow
21 the claims as amended.

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Application No. 09/638,017



1 **V. CLAIM OBJECTIONS**

2 1. At page 4, paragraph 11, the Examiner states "In claim 1, the period at the end
3 of line 14 should be a comma. Claim 1 has been so amended. The Examiner is requested
4 to withdraw the objection and to allow the claim.

5 2. At page 4, paragraph 12 the Examiner states "The word "surface" should be
6 deleted in line 20 of claim 1 to improve clarity. Claim 1 has been amended. The
7 Examiner is requested to withdraw the objection.

8 3. At page 4, paragraph 13 the Examiner states "In claim 4, line 7, "plated"
9 should apparently read "plates". Claim 4 has been so amended. The Examiner is
10 requested to withdraw the objection and to allow the claim.

11 4. At page 4, paragraph 14 the Examiner states "In claim 16, line 1,
12 "compromising" should read -comprising-. The amendment has been made. The
13 Examiner is requested to withdraw the objection and to allow the claim.

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Application No. 09/638,017

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1 VI. AMENDMENTS TO THE CLAIMS

2 1. (Currently amended) A self-contained seed treater comprising,

3 a drum having a surrounding wall and a top opening and a ~~bottom opening~~ central
4 discharge opening (56),

5 a rotatable shaft mounted in the drum on a vertical axis,

6 a spreader mounted on the shaft adjacent the top of the drum, and adapted to
7 receive seed flowing downwardly through the top opening, and operable for throwing the
8 seed outwardly into engagement with the surrounding wall, the spreader (90) having a
9 bottom (92) which is of conical shape.10 an upper bowl below the spreader, and tapering downwardly and having a bottom
11 opening, and being otherwise imperforate and secured to the surrounding wall without
12 space between itself and the surrounding wall,13 whereby all the seed on the surrounding wall thrown from the spreader will flow
14 into the upper bowl[.]_.15 the construction of the seed treater being such as to enable the seed in the upper
16 bowl to flow through the bottom opening in the upper bowl and through the ~~bottom~~
17 ~~opening~~ central discharge opening (56) of the seed treater into a receptacle, and18 the seed treater including power transmitting means operably connecting power
19 means for rotating the shaft (68) surface.20
21 2. (Currently amended) A seed treater according too claim 1 wherein,22 the drum has a top closure plate (48) cover in which the top opening is formed,
23 and24 the drum includes a flange unit on the top closure plate (48) cover having a
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Application No. 09/638,017

1 central opening co-axial with the top opening of the drum and a flange element spaced
2 axially from the top closure plate (48) cover and extending transversely of the axis, for
3 detachably securing[it] the drum (44) to an overhead supporting structure, and
4 a downwardly directed cone shaped conical bottom closure plate (54), with a
5 central discharge opening (56) forming the bottom opening and forming a bottom bowl,
6 the bottom closure plate (54) secured to the surrounding wall, the bottom bowl coaxially
7 positioned with the drum and surrounding imperforate element positioned for receiving
8 the grain falling through the drum.

9
10 3. (Currently amended) A seed treater according to claim 1 and including,

11 the spreader (90) bottom plate (92) having vertical blades (94) opening radially
12 outwardly following the downward slope of the bottom plate (92).

13 upper and lower first-bearing means for supporting the shaft,

14 bearing supporting second means supporting the bearing means within the drum,

15 and

16 the bearing second supporting means being operable for detachably mounting the
17 second bearing supporting means on the surrounding wall.

18
19 4. (Currently amended) A seed treater according to claim [1] 3, wherein,

20 the drum is cylindrical and the bearing supporting means includes upper and
21 lower bearing support means includ[es] ing [an] upper a protected upper bearing
22 support between the spreader and the upper bowl,

23 the upper bearing support extends diametrically across the drum and includes
24 spaced apart side bars positioned vertically on edge, and having end plated plates also

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Application No. 09/638,017

1 positioned on edge by which the upper bearing support is detachably secured to the
2 surrounding wall,

3 the upper bearing support also including a central horizontal plate secured to the
4 side bars, and

5 the upper bearing means is detachably and fixedly mounted on the plate,

6 whereby relatively great space is provided outwardly of the side bars, and between
7 the side bars radially outwardly beyond the central horizontal plate to enable the seed to
8 flow freely downwardly through the drum.

9
10 5. (Currently amended) A seed treater according to Claim 4 wherein,

11 the upper bearing support includes holes in curved end plates (80) its structures
12 for receiving the outlet ends of the fluid flow hoses tubes (84) from the exterior leading
13 to a position adjacent the shaft for conducting fluid into the drum to a position adjacent
14 the shaft.

15
16 6. (Currently amended) A seed treater according to claim 1 and including a rotary
17 applicator between the spreader and the upper bowl,

18 the applicator (100) has a central hub (102) secured to the shaft, and a bottom
19 plate (101) with vertical radial blades (106); the applicator (100) is of lesser depth than
20 the spreader (90), and

21 is mounted on the shaft and rotatable therewith and positioned for receiving fluid
22 from the terminal ends of the fluid flow hoses tubes (84), and operable for throwing fluid
23 that is placed thereon outwardly into engagement with the falling seed kernels on the wall
24 of the drum.

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Application No. 09/638,017

1 7. (Currently amended) A seed treater according to claim 5 and including
2 a rotary applicator mounted on the shaft and rotatable therewith,
3 and the rotary applicator is positioned between the upper bearing support and the
4 upper bowl, and thereby positioned below the fluid flow tubes (84) ~~line outlets~~ for
5 receiving thereon fluid introduced into the drum.

6
7 8. (Currently amended) A seed treater according to claim 7 wherein,
8 at least one upper coater (112), is smaller in diameter than the spreader (90) and
9 has a central hub 114 by which the upper coater (112), is mounted on the shaft 68, for
10 rotation therewith; the upper coater (112) having bottom plates (116) of conical shape,
11 and vertical- radial blades (118) opening radially outwardly; the upper coater (112) is
12 mounted below the upper bowl (104);

13 the upper bowl (104) fixedly mounted in the drum (44);

14 at least one central bowl (120) fixedly mounted in the drum (44) below at least
15 one upper coater (112), and tapering downwardly and having a bottom opening, and being
16 otherwise imperforate and secured to the surrounding wall without space between itself
17 and the surrounding wall, the at least one central bowl (120) receives the mixture from
18 the wall 46, in the area radially outwardly from the upper coater 112 and the mixture
19 then flows through this central bowl and down through its bottom opening 122;

20 at least one lower coater (124), is smaller in diameter than the spreader (90) and
21 has a central hub which the lower coater (124), is mounted on the shaft (68), for rotation
22 therewith; the lower coater (124) having bottom plates of conical shape, and vertical-
23 radial blades opening radially outwardly; the lower coater (124) is mounted below the at
24 least one central bowl (120);

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Application No. 09/638,017

1 the at least one lower coater (124) mounted on the shaft (68) above the hogback
2 (76);

3 below the hogback (76) a conical bottom closure plate (54), with a central
4 discharge opening (56), forming a bottom bowl (54); and

5 at least one pair of wipers (128, 129, 130) are in wiping contact with each of the
6 said upper bowl (104), the at least one central bowl (120) and the bottom bowl (54); each
7 pair of wipers at each of the upper bowl (104), the at least one central bowl (120) and the
8 bottom bowl (54) are mutually identical, and arranged symmetrically, on a common
9 diameter, each of the at least one pair of wipers (128, 129, 130) are secured to the shaft
10 (68) or the upper coater (112) for rotation with the rotation of the shaft (68);

11 the wipers in the different pairs for the upper bowl (104), the at least one central
12 bowl (120) and the bottom bowl (54) differ in size and shape to accommodate the shape
13 of the respective upper bowl (104), the at least one central bowl (120) and the bottom
14 bowl (54);

15 for each wiper pair, each wiper (128, 129, 130) includes a mounting piece (132,
16 142, 146) and a blade (133) extending down into the respective upper bowl (104), at least
17 one central bowl (120) and bottom bowl (54); the blade (133) is positioned at the
18 periphery of each of the respective bowls (104, 120 and 54); the blade (133) having an
19 upper edge (135) which is inclined upwardly in radial outward direction to a point (136)
20 above a flange (110) of the each of the respective upper bowl and at least one central
21 bowl (104, 120) and to a point at the uppermost point of the bottom bowl (54) such that
22 the blade (133) engages the wall of the drum;

23 each blade (133) has a radial outer edge (138) which also engages the flange (136)
24 with wiping contact; a lower edge (139) of the blade (133) engages the wall of the

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Application No. 09/638,017

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1 respective bowl (104, 120, 54) down to a point (141) proximal the respective bowl
2 bottom or discharge opening (108, 122, 56); each of the respective blades (133) has a
3 lower/inner edge (142) which extends up to the mounting piece (132);

4 the blade (133) is made of relatively stiff yet flexible material (10) which will
5 yield upon engaging an obstacle;

6 the blades (133) are spaced apart, engaging the bowl only at the outer portion
7 thereof, and leaving an empty space therebetween.

8 the blades (133), in each pair, extend approximately threefourths of a slant height
9 of the sloped bottom of each of the respective bowls (104, 120, 54), from an upper edge
10 of the each of the respective bowls (104, 120, 54) leaving the lower one- fourth of the
11 slant height of each of the sloped bottoms of each of the respective bowls (104, 120, 54)
12 open;

13 the wipers (128, 129, 130), upon rotation with the shaft (68), wipe the respective
14 bowls (104, 120, 54) and wipe the mixture and work it inwardly so as to position the
15 mixture directly over the bottom or discharge opening (108, 122, 56) of each of the
16 respective bowls (104, 120, 54);

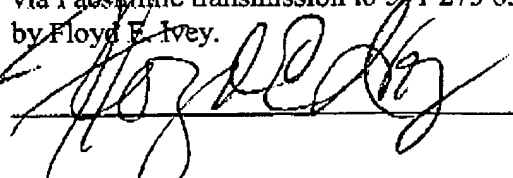
17 each of the spreader, applicator, and upper coater[s] and the at least one lower
18 coater, includes a bottom plate extending substantially its full area, and vertical blades
19 extending upwardly from bottom plate, and

20 the spreader (90) bottom plate (92) and blades (94) have a central opening (96),
21 for receiving the upper bearing 70;

22 the upper coater (112), is positioned close to the upper bowl (104), and as the
23 grain and fluid mixture flows down the upper bowl (104), it falls into the upper coater
24 (112), and is again thrown out against the surrounding wall (46), this action produces a

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Application No. 09/638,017



1 mixing effect, which is added to that of the spreader (90), and upper bowl (104);
2 the at least one central bowl (120) receives the mixture from the wall (46), in the
3 area radially outwardly from the upper coater (112) and the mixture then flows through
4 the at least one central bowl (120) and down through its bottom opening (122);
5 the lower coater (124) is operable for throwing the mixture that falls into it from
6 the at least one central bowl (120), in outward direction against the surrounding wall (46).

7
8 9. (Currently amended) A seed treater according to claim [1] 3 and including,
9 an upper rotary coater below the upper bowl and secured to the shaft, and
10 positioned for receiving seed and fluid from the upper bowl and operable for throwing
11 seed and fluid outwardly against the wall of the drum, and
12 the upper coater (112), is smaller in diameter than the spreader (90) and has a
13 central hub 114 by which the upper coater (112) is mounted on the shaft 68 for rotation
14 therewith; the upper coater (112) having bottom plates (116) of conical shape, and
15 vertical- radial blades (118) opening radially outwardly.

16
17 10. (Currently amended) A seed treater according to claim 9 and including,
18 a center bowl substantially identical with the upper bowl below the upper coater,
19 and fixedly mounted in the drum substantially identically to the mounting of similarly to
20 the upper bowl.

21
22 11. (Currently amended) A seed treater according to claim 10 and including,
23 a lower rotary coater substantially identical with the upper rotary coater and
24 mounted below the lower central bowl and mounted substantially identically to the

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Application No. 09/638,017

1 mounting of similarly to the upper rotary coater, and

2 the lower rotary coater (124), is smaller in diameter than the spreader (90) and has
3 a central hub 114 by which the lower rotary coater (124) is mounted on the shaft 68 for
4 rotation therewith; the lower coater (124) having bottom plates (116) of conical shape,
5 and vertical- radial blades (118) opening radially outwardly.

6
7 12. (Currently amended) A seed treater according to claim 11 and including,

8 a hogback adjacent to the lower end of the drum and below ~~all of the above~~
9 ~~instrumentalities and structures~~ the central bowl,

10 a conical bottom closure plate (54), with a central discharge opening (56), forming
11 a bottom bowl (54) below the hogback (76); and

12 the hogback being constituted by a rigid elongated piece extending diametrically
13 across the drum and secured at its ends to the surrounding wall includes a main structural
14 member 125, made up of a pair of plates 126, disposed at an angle to each other and is
15 disposed with the apex of the angle upwardly, and

16 lower bearing means mounted on and under the hogback and supporting the shaft.

17
18 13. (Currently amended) A seed treater according to claim 12 and including,

19 power means mounted on the exterior of the drum, and

20 power transmitting means operably connecting the power means and the shaft and
21 extending into the drum and underlying the hog back ~~throughout its extent to the shaft;~~
22 the power transmitting means ~~and thereby shielded by the hogback from grain falling~~
23 ~~through the drum.~~

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Application No. 09/638,017

1 14. (Cancelled)

2

3 15. (Original) A seed treater according to claim 1 and including,

4 in addition to the upper bowl,

5 a central bowl and a bottom bowl,

6 all concentric with the axis and through all of which the seed mixture flows, and

7 the seed treater includes rotary wipers secured to the shaft and extending into the

8 respective bowls, and operable in response to rotation of the shaft, for wiping the floor of

9 the bowls.

10

11 16. (Currently amended) Apparatus for treating seed, ~~comprising comprising~~,

12 a cylindrical drum having top and bottom openings, the bottom opening being the

13 central discharge opening (56);

14 the drum including means for mounting it on and below a floor in a building, and

15 adapted to receive grains of different characteristics through the top opening, for mixing

16 grains,

17 the drum including means therewithin for mixing the grains in response to the fall

18 of the grains through the drum,

19 a spreader mounted on the shaft adjacent the top of the drum, and adapted to

20 receive seed flowing downwardly through the top opening, and operable for throwing the

21 seed outwardly into engagement with the surrounding wall, the spreader (90) having a

22 bottom (92) having a conical shape,

23 the spreader (90) bottom plate (92) having vertical blades (94) opening radially

24 outwardly following the downward slope of the bottom plate (92).

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Application No. 09/638,017

1 and the apparatus including power means mounted on the drum for operating the
2 mixing means.

3
4 17. (Currently amended) Apparatus according to claim 16 and including,

5 fluid flow means (84) conduit means leading from the exterior into the interior of
6 the drum for conducting liquid chemicals into the drum for mixing with the grains in the
7 drum.

8
9 18. (Currently amended) A method of treating seeds utilizing the apparatus of claim 13
10 comprising:

11 adapt[ed]ing the apparatus for use in an elevator which includes a building with
12 an elevated floor having a supply opening therethrough and a space below the floor for
13 accommodating vehicles for receiving the seeds, comprising:

14 providing seeds to be mixed treated on the elevated floor,

15 providing a self-contained mixing treating unit having a top opening and a
16 bottom opening for flow of seeds therethrough and through the mixing treating unit, and
17 mixing treating the seeds as the seeds flow through the mixing unit; the bottom opening
18 being the central discharge opening (56).

19
20 19. (Currently amended) A method according to Claim 18 and including the step,

21 introducing fluid into the mixing treating unit with the introduction of the seeds,
22 and mixing treating the seeds and with the fluid.

23
24 20. (Currently amended) A method according to Claim 19 for use in such elevator that

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Application No. 09/638,017

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1 includes a driveway in said space in the building for movement of vehicles on the
2 driveway, and including the step,
3 introducing ~~mixed~~ treated grain from the ~~mixing~~ treating unit on the driveway
4 and moving the vehicle from the building.

REMARKS**VI. CLAIM REJECTIONS UNDER 35 USC 112**

9 The Examiner has rejected claims under 35 USC 112 at pages 4-8, paragraphs 15-
10 41.

11 1. At page 5 paragraph 16 the Examiner rejects claim 13 as containing subject
12 matter which was not described in the specification in such a way as to enable one skilled
13 in the art to which it pertains, or with which it is most nearly connected, to make and/or
14 use the invention.

15 Claim 13 has been amended as follows:

16 power transmitting means operably connecting the power means and the
17 shaft and extending into the drum and underlying the hog back ~~throughout its~~
18 ~~extent to the shaft; the power transmitting means~~ and thereby shielded by the
19 hogback from grain falling through the drum.

20
21 The Examiner is requested to withdraw the rejection and to allow the claim as
22 amended.

23
24 2. At page 5 paragraph 18 the Examiner states that Claims 1-15 and 17 are

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Application No. 09/638,017

1 rejected under 35 USC 112 as being indefinite for failing to particularly point out and
2 distinctly claim the subject matter which applicant regards as the invention. It is
3 understood by your applicant that paragraphs 17 through 41 pertain to rejections under 35
4 USC 112 second paragraph.

5

6 3. At page 5 paragraph 19 the Examiner states that there is insufficient antecedent
7 basis for the Claim 1 limitation "the bottom opening of the seed treater" and suggests that
8 "the bottom opening of the seed treater" instead read - the bottom opening of the drum-.

9 The Examiner is respectfully directed to the Specification at page 5/line 23 to page
10 6/line 2 which identifies the element addressed in this rejection stating the following:

11 The device has a flat, annular top closure plate 48, with a central inlet
12 opening or feed hole 50, surrounded by a cylindrical tube 52, and has a conical
13 bottom closure plate 54, with a central discharge opening 56, forming a bottom
14 bowl.

15

16 Here the element is seen to be the "central discharge opening 56." Claim 1 has
17 been amended to claim "central discharge opening (56)". Amendments have likewise
18 been made to Claim 2, claim 16 and claim 18. The Examiner is requested to withdraw the
19 rejection and to allow the claims as amended.

20

21 4. At page 6 paragraph 20 the Examiner states that it is unclear what "it" refers to
22 in claim 2, line 7. It is noted that "it" refers to the drum (44). Claim 2 has been amended.

23

24 5. At page 6 paragraph 21 the Examiner states that it is unclear whether "the

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Application No. 09/638,017



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1 bearing means" in claim 3/line 4 refers to the upper first bearing means or the lower first
2 bearing means or both.

3 The Examiner is referred to the Specification at page 6/line 22 to page 7/3 which
4 identifies the lower bearing support 76 and which states:

5 The seed treater includes a main shaft 68, extending nearly the height of the
6 drum 44, being driven by a drive means at the bottom, referred to below. The shaft
7 is mounted in an upper bearing 70 and a lower bearing 72, the upper bearing 70
8 being mounted on an upper bearing support 74, and the lower bearing on and under
9 a lower bearing support 76.

10

11 Claim 3 has been amended to refer to the "lower bearing support (76)" as follows:
12 upper and lower first-bearing means for supporting the shaft,
13 upper and lower bearing support second-means supporting the bearing means
14 within the drum, and
15

16 6. At page 6 paragraph 22 the Examiner states that in claim 4/line 2 there is lack of
17 antecedent basis for "the supporting means".

18 The Examiner is referred to the Specification at page 6/line 22 to page 7/line 3 re:
19 the upper bearing support (74) and page 9/lines 21-page 10/line 6 re: the lower bearing
20 support (76). Claims 3 and 4 are amended.

21 Claim 3 is amended as follows:

22 bearing supporting second-means supporting the bearing means within the
23 drum, and
24 the bearing second supporting means being operable for detachably mounting the
25

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Application No. 09/638,017

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1 second bearing supporting means on the surrounding wall.

2
3 Claim 4 is amended as follows:

4 the drum is cylindrical and the bearing supporting means includes upper
5 and lower bearing support means includ[es] ing [an] ~~upper~~ a protected upper
6 bearing support between the spreader and the upper bowl,

7
8 The Examiner is respectfully requested to withdraw the rejection and to allow
9 claim 4 as amended.

10
11 7. At page 6 paragraph 23 the Examiner states that in claim 4/line 12 there is lack
12 of antecedent basis for "the upper bearing means" and that "[A]n upper protected bearing
13 support" is not considered to be sufficient antecedent basis for "the upper bearing means".

14 The Examiner is respectfully referred to the immediately preceding Response to
15 the rejection at page 6/paragraph 22. The Examiner is requested to withdraw the rejection
16 and to allow claim 4 as amended.

17
18 8. At page 6 paragraph 24 the Examiner states that in claim 4/line 13, it is unclear
19 if "the plate" refers to the horizontal plate or one of the end plates. The Examiner is
20 referred to the specification starting at page 7/line 3-9 which identifies the "central plate
21 (82), on which the bearing 70 is directly mounted." Claim 4 at line 13 refers to the
22 horizontal plate and not one of the end plates.

23 The Examiner is respectfully requested to withdraw the rejection and to allow
24 claim 4 as amended.

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Application No. 09/638,017


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1 9. At page 6 paragraph 25 the Examiner states that claim 5 there is lack of
2 antecedent basis for "the outlet ends of the fluid flow hoses" and that no hoses have been
3 recited in claim 5 or its parent claims.

4 The Examiner is referred to the specification page 7/lines 10-17 stating:

5 Mounted in the support 74, are tubes 84, arranged oppositely and on a
6 common diameter for conveying liquid chemicals into the device. These tubes lead
7 through the drum and under the bearing plate 82 and empty downwardly into the
8 drum. The outer ends of the tubes 84 lead through the end plates 80, and the
9 surrounding wall 46, through an exterior fitting 88, for attachment to lead-in lines
10 89 carrying the chemicals to the device.

11
12 Claim 5 has been amended as follows:

13 the upper bearing support includes holes in its structures for receiving the
14 outlet ends of the fluid flow hoses tubes (84) from the exterior leading to a
15 position adjacent the shaft for conducting fluid into the drum to a position adjacent
16 the shaft.

17
18 10. At page 6 paragraph 26 the Examiner states that in claim 5 it is unclear what
19 the scope of "its structures" is.

20 The Examiner is referred to the Specification page 7 lines 4-17 as follows:

21 The upper bearing member 70 is shown in Figs. 7 and 8 and is fixedly
22 mounted in the device. It includes a pair of spaced parallel arms 78, with curved
23 end plates 80, the latter being detachably secured to the inner surface of the wall
24 46, and having a central plate 82, on which the bearing 70 is directly mounted.

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Application No. 09/638,017


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1 Mounted in the support 74, are tubes 84, arranged oppositely and on a common
2 diameter for conveying liquid chemicals into the device. These tubes lead through
3 the drum and under the bearing plate 82 and empty downwardly into the drum.
4 The outer ends of the tubes 84 lead through the end plates 80, and the surrounding
5 wall 46, through an exterior fitting 88, for attachment to lead-in lines 89 carrying
6 the chemicals to the device.

7
8 The reference to "its structures" is to the curved end plates (80) through which the
9 outer ends of the tubes 84 lead through an exterior fitting (88) for attachment to lead-in
10 lines (89) carrying the chemicals to the device.

11 Claim 5 has been further amended as follows:

12 the upper bearing support includes holes in curved end plates (80) its
13 structures for receiving the-outlet ends of the-fluid flow hoses tubes (84) from
14 the exterior leading to a position adjacent the shaft for conducting fluid into the
15 drum to a position adjacent the shaft.

16
17 The Examiner is requested to withdraw the rejection and to allow claim 5 as
18 amended.

19
20 11. At page 6 paragraph 27 the Examiner states that in claim 5, it is unclear what
21 "the exterior" refers to and "the exterior of what?" The Examiner is referred to the
22 specification at page 7 as recited in the Response to paragraph 26.

23 Claim 5 has been further amended as follows:

24 tubes (84) are mounted in the upper bearing support (74) and are arranged

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Application No. 09/638,017

1 oppositely and on a common diameter for conveying liquid chemicals into the
2 device drum (44);

3 the upper bearing (70) is mounted on the upper bearing support (74),
4 curved end plates (80) are distal to the upper bearing (70);

5 the curved end plates (80) [and] include[s] holes in its structures for
6 receiving the outlet ends of the fluid flow hoses tubes (84) from the exterior leading to a
7 position adjacent the shaft for conducting fluid into the drum to a position adjacent the
8 shaft[.] and,

9 the outlet ends of the fluid flow tubes 84 lead through the end plates 80,
10 and the surrounding wall 46, through an exterior fitting 88, for attachment to lead-
11 in lines 89 carrying the chemicals to the drum (44).

12
13 The Examiner is requested to withdraw the rejection of claim 5 and to allow the
14 claim as amended.

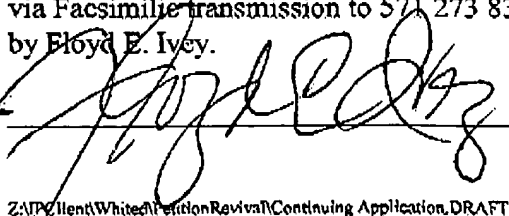
15
16 12. At page 6 paragraph 28 the Examiner states that in claim 6 there is lack of
17 antecedent basis for "the terminal ends of the fluid flow hoses" and that "no hoses have
18 been recited in claim 6 or its parent claim.

19 Claim 5 has been amended to strike reference to hoses and to refer to fluid flow
20 tubes (84). Claim 6 is amended as follows:

21 is mounted on the shaft and rotatable therewith and positioned for receiving
22 fluid from the terminal ends of the fluid flow hoses tubes (84), and operable for
23 throwing fluid that is placed thereon outwardly into engagement with the falling
24 seed kernels on the wall of the drum.

25
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Application No. 09/638,017


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1 13. At page 6 paragraph 29 the Examiner states that in claim 7, line 6, there is lack
2 of antecedent basis for "the fluid line".

3 The Examiner is respectfully referred to the amendments to claims 5 and 6 re:
4 "fluid flow tubes (84)".

5 Drawing Fig. 5, at reference character 74 illustrates exterior fitting (88), as
6 disclosed in the Specification at page 7 and addressed in Response to page 6/paragraph 26
7 of these Examiner rejections. Fig. 5, as submitted, disclosed reference character 86 to the
8 structure connection to 88.

9 Fig. 5 has been amended to change 86 to 84.

10

11 Claim 7 has been amended as follows:

12 and the rotary applicator is positioned between the upper bearing support and the
13 upper bowl, and thereby positioned below the fluid flow tubes (84) ~~line outlets~~ for
14 receiving thereon fluid introduced into the drum.

15

16 The Examiner is respectfully requested to withdraw the rejection and to allow the
17 claim as amended.

18

19 14. At page 6 paragraph 30 the examiner states in claim 8, line 2, the phrase "each
20 the spr4eader..." is unclear. Perhaps "each the spreader" should read -each of the
21 spreader-.

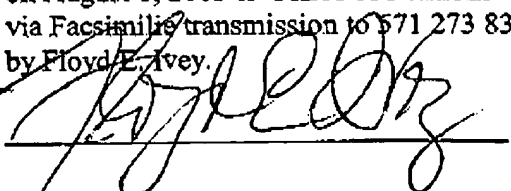
22 Claim has been amended in accordance with the recommendation of the Examiner.
23 The Examiner is requested to withdraw the rejection and to allow claim 8 as amended.

24

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Application No. 09/638,017


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15. At page 6 paragraph 31 the examiner states in claim 8, line 2, there is lack of antecedent basis for "the...coaters".

The Examiner is referred, regarding bowls and coaters, to the Specification at page 9 commencing at line 9 stating the following:

Mounted below the upper bowl 104, is an upper coater 112, which is generally similar to the spreader 90, but of different dimensions, being smaller in diameter than the latter. The coater includes a central hub 114, by which it is mounted on the shaft 68 for rotation therewith. It includes bottom plates 116, and vertical- radial blades 118 opening radially outwardly.

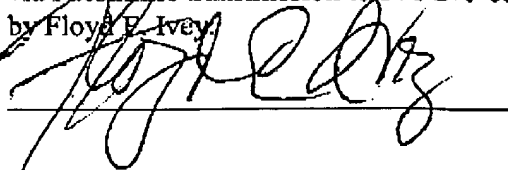
This upper coater 112, is positioned close to the upper bowl 104, and as the grain and fluid mixture flows down the bowl, it falls into the upper coater 112, and is again thrown out against the surrounding wall 46. this action produces a mixing effect, which is added to that of the spreader 90, and upper bowl 104.

Below the upper coater 112, is a central bowl 120, 10 identical in construction with the upper bowl 104, and mounted in a similar manner in the drum. This bowl receives the mixture from the wall 46, in the area radially outwardly from the upper coater 112 and the mixture then flows through this central bowl and down through its bottom opening 122.

Below the central bowl 120, is a lower coater 124, which is identical in construction with the upper coater 112, and operable for throwing the mixture that falls into it from the central bowl 120, in outward direction against the surrounding

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Application No. 09/638,017



1 wall. At this point the mixture as it engages the outer wall 20 continues to flow
2 down through the drum.

3
4 The Examiner is referred, re: wipers, to the Specification at page 10/line 18 to page
5 12/line 13 stating:

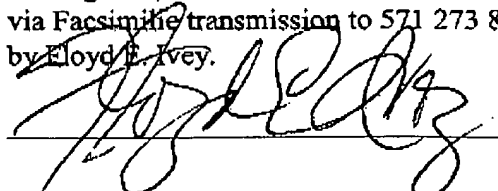
6 To overcome this problem three pairs of wipers 128, 129, 130 are provided as
7 shown in Fig. 14. In each pair, the wipers 20 are mutually identical, and arranged
8 symmetrically, on a common diameter. The wipers in the different pairs differ in
9 size and shape.

10
11 Each wiper 128 includes a small flat steel mounting piece 132 welded to the
12 applicator, on the under surface of the latter and at the periphery thereof, and a
13 blade 133 extending down into the upper bowl. The blade is positioned at the
14 periphery of the bowl. Its upper edge 135 is inclined upwardly in radial outward
15 direction to a point 136 above the flange 110 of the 5 bowl, engaging the wall of
16 the drum at that point. Its radially outer edge 138 also engages the flange. The
17 lower edge 139 of the blade engages the wall of the bowl down to a point 141, and
18 its lower/inner edge 142 extends up to the mounting piece 132. The blade 133 is
19 made of rubber belting material of known kind, 10 and accordingly is relatively
20 stiff and will yield upon engaging an obstacle.

21
22 The blades 133 are spaced apart, engaging the bowl only at the outer portion
23 thereof, and leaving an empty space therebetween,
24
25

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Application No. 09/638,017


32
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1 The wiper blades, in each pair, extend approximately threefourths of the slant
2 height of the sloped bottom, from the upper edge of the latter, leaving the lower
3 one- fourth open.

4
5 The wipers, upon rotation with the shaft, wipe the bowl, and wipe the mixture and
6 work it inwardly so as to position it 20 directly over the bottom outlet opening.

7 This action forms a dense column at the center which as a mass moves
8 downwardly, overcoming the tendency of the accumulation of the mixture on the
9 wall of the bowl.

10
11 In the case of the wipers 129, the mounting pieces 142 are secured to the upper
12 coater 112 which is of lesser diameter than the applicator 100, and the blades are
13 therefore radially longer than the blades in the wipers 128. The upper edged 143 is
14 5 inclined upwardly and terminates at 145 at the upper edge of the flange 110.

15
16 The wiper 130 includes a central hub 146 mounted on the lower end of the shaft 68
17 to which mounting pieces 148 are welded.

18
19 The blades 149 engage the inner surface of the bottom bowl 54 at the upper part of
20 the latter. Thus the three bowls are wiped of the mixture, producing faster and
21 more efficient flow.

22
23 **Claim 8 is amended as follows:**

24 at least one upper coater (112), is smaller in diameter than the spreader (90) and

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Application No. 09/638,017

1 has a central hub 114 by which the upper coater (112), is mounted on the shaft 68, for
2 rotation therewith; the upper coater (112) having bottom plates (116) of conical shape, and
3 vertical- radial blades (118) opening radially outwardly; the upper coater (112) is mounted
4 below the upper bowl (104);

5 the upper bowl (104) fixedly mounted in the drum (44);

6 at least one central bowl (120) fixedly mounted in the drum (44) below at least one
7 upper coater (112), and tapering downwardly and having a bottom opening, and being
8 otherwise imperforate and secured to the surrounding wall without space between itself
9 and the surrounding wall, the at least one central bowl (120) receives the mixture from the
10 wall 46, in the area radially outwardly from the upper coater 112 and the mixture then
11 flows through this central bowl and down through its bottom opening 122;

12 at least one lower coater (124), is smaller in diameter than the spreader (90) and
13 has a central hub which the lower coater (124), is mounted on the shaft (68), for rotation
14 therewith; the lower coater (124) having bottom plates of conical shape, and vertical-
15 radial blades opening radially outwardly; the lower coater (124) is mounted below the at
16 least one central bowl (120);

17 the at least one lower coater (124) mounted on the shaft (68) above the hogback
18 (76);

19 below the hogback (76) a conical bottom closure plate (54), with a central
20 discharge opening (56), forming a bottom bowl (54); and

21 at least one pair of wipers (128, 129, 130) are in wiping contact with each of the
22 said upper bowl (104), the at least one central bowl (120) and the bottom bowl (54); each
23 pair of wipers at each of the upper bowl (104), the at least one central bowl (120) and the
24 bottom bowl (54) are mutually identical, and arranged symmetrically, on a common

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Application No. 09/638,017

1 diameter, each of the at least one pair of wipers (128, 129, 130) are secured to the shaft
2 (68) or the upper coater (112) for rotation with the rotation of the shaft (68);

3 the wipers in the different pairs for the upper bowl (104), the at least one central
4 bowl (120) and the bottom bowl (54) differ in size and shape to accommodate the shape of
5 the respective upper bowl (104), the at least one central bowl (120) and the bottom bowl
6 (54);

7 for each wiper pair, each wiper (128, 129, 130) includes a mounting piece (132,
8 142, 146) and a blade (133) extending down into the respective upper bowl (104), at least
9 one central bowl (120) and bottom bowl (54); the blade (133) is positioned at the
10 periphery of each of the respective bowls (104, 120 and 54); the blade (133) having an
11 upper edge (135) which is inclined upwardly in radial outward direction to a point (136)
12 above a flange (110) of the each of the respective upper bowl and at least one central bowl
13 (104, 120) and to a point at the uppermost point of the bottom bowl (54) such that the
14 blade (133) engages the wall of the drum;

15 each blade (133) has a radial outer edge (138) which also engages the flange (136)
16 with wiping contact; a lower edge (139) of the blade (133) engages the wall of the
17 respective bowl (104, 120, 54) down to a point (141) proximal the respective bowl bottom
18 or discharge opening (108, 122, 56); each of the respective blades (133) has a lower/inner
19 edge (142) which extends up to the mounting piece (132);

20 the blade (133) is made of relatively stiff yet flexible material (10) which will
21 yield upon engaging an obstacle;

22 the blades (133) are spaced apart, engaging the bowl only at the outer portion
23 thereof, and leaving an empty space therebetween.

24 the blades (133), in each pair, extend approximately threefourths of a slant height

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Application No. 09/638,017

1 of the sloped bottom of each of the respective bowls (104, 120, 54), from an upper edge of
2 the each of the respective bowls (104, 120, 54) leaving the lower one- fourth of the slant
3 height of each of the sloped bottoms of each of the respective bowls (104, 120, 54) open;

4 the wipers (128, 129, 130), upon rotation with the shaft (68), wipe the respective
5 bowls (104, 120, 54) and wipe the mixture and work it inwardly so as to position the
6 mixture directly over the bottom or discharge opening (108, 122, 56) of each of the
7 respective bowls (104, 120, 54);

8 each of the spreader, applicator, and upper coater[s] and the at least one lower
9 coater, includes a bottom plate extending substantially its full area, and vertical blades
10 extending upwardly from the bottom plate, and

11 the spreader (90) bottom plate (92) and blades (94) have a central opening (96), for
12 receiving the upper bearing 70;

13 the upper coater (112), is positioned close to the upper bowl (104), and as the grain
14 and fluid mixture flows down the upper bowl (104), it falls into the upper coater (112),
15 and is again thrown out against the surrounding wall (46). this action produces a mixing
16 effect, which is added to that of the spreader (90), and upper bowl (104);

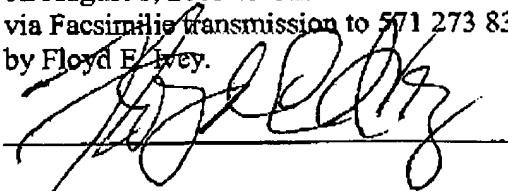
17 the at least one central bowl (120) receives the mixture from the wall (46), in the
18 area radially outwardly from the upper coater (112) and the mixture then flows through the
19 at least one central bowl (120) and down through its bottom opening (122);

20 the lower coater (124) is operable for throwing the mixture that falls into it from
21 the at least one central bowl (120), in outward direction against the surrounding wall (46).

22
23 The Examiner is requested to withdraw the rejection at paragraph 31 and to allow
24 claim 8 as amended.

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Application No. 09/638,017


36
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1 16. At page 6 paragraph 32 the Examiner states that in claim 8, line 4, the phrase
2 "from bottom plate" should read -from the bottom plate-. The amendment has been
3 made. Please refer to the above paragraph 15 addressing the rejection at paragraph 32.
4 Consequently the Examiner is requested to withdraw the rejection and to allow the claim.

5
6 17. At page 7 paragraph 33 the Examiner states that Claims 10 and 11 are
7 rendered indefinite by the word "similarly".

8 Claim 10 has been amended as follows:
9 a center bowl substantially identical with the upper bowl below the upper coater,
10 and fixedly mounted in the drum substantially identically to the mounting of
11 similarly to the upper bowl.

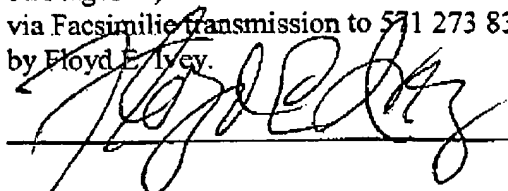
12
13 Claim 11 has been amended as follows:
14 a lower rotary coater substantially identical with the upper rotary coater and
15 mounted below the ~~lower~~ central bowl and mounted substantially identically to the
16 mounting of similarly to the upper rotary coater, and

17
18 The Examiner is requested to withdraw the rejections of claims 10 and 11 and to
19 allow the claims as amended.

20
21 18. At page 7 paragraph 34 the Examiner states that in claim 11, line 3, there is
22 lack of antecedent basis for "the lower bowl" and that perhaps "the lower bowl" should
23 read - the central bowl - especially considering that recitation of "a lower rotary
24 coater...mounted below the lower bowl" contradicts the drawings and the remainder of the

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Application No. 09/638,017


37
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1 specification (given that an upper and central bowl has been previously recited) and that
2 "no coater below the lower bowl is shown in the drawings of discussed in the
3 specification, except in this claim."

4 Claim 11 has been amended in accordance with the suggestion of the Examiner.
5 Please refer to the amendment addressed at the Response to paragraph 34. The Examiner
6 is requested to withdraw the rejection and to allow the claim as amended.

7
8 19. At page 7 paragraph 35 the Examiner states that in claim 12, the phrase "below
9 all of the above instrumentalities and structures" and that it is unclear if "above" is meant
10 in a physical sense referring to the apparatus or in a linguistic sense referring to the written
11 claims and that it is unclear what the scope of "all the above instrumentalities and
12 structures" is.

13 Claim 12 has been amended as follows:

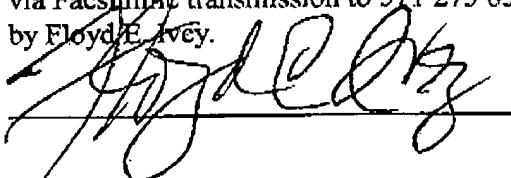
14 a hogback adjacent to the lower end of the drum and below ~~all of the above~~
15 ~~instrumentalities and structures~~ the central bowl,
16 a conical bottom closure plate (54), with a central discharge opening (56), forming
17 a bottom bowl (54) below the hogback (76); and

18
19 The Examiner is respectfully requested to withdraw the rejection and to allow the
20 claim as amended.

21
22 20. At page 7 paragraph 36 the examiner states that claim 13 is unclear and that in
23 parent claim 1, "power means for rotating the shaft surface" are recited. Further that in
24 line 2 of claim 13, "power means" are again recited, and in line 3 of claim 13, "power

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Application No. 09/638,017



1 transmitting means' are recited. And finally, in lines 3-4 of claim 13, "the power means"
2 is recited. To which of the three previously recited power means does "the power means"
3 refer?

4 Claim 1 has been amended as follows:
5 the seed treater including power transmitting means operably connecting power
6 means for rotating the shaft (68) surface.

7 Thus the power means is an electric motor or other such means. The power
8 transmitting means is a belt or chain drive or a gear relationship. The Examiner is
9 requested to withdraw the rejection with this Responsive amendment of claim 1 and to
10 allow claim 13 and 1 as amended.

11
12 21. At page 7 paragraph 37 the Examiner states that in claim 13, line 5, it is
13 unclear what "its" refers to, the "hogback" or the "power transmitting means"?

14 Claim 13 has been amended as follows:
15 power transmitting means operably connecting the power means and the shaft and
16 extending into the drum and underlying the hog back ~~throughout its extent to the~~
17 ~~shaft; the power transmitting means~~ and thereby shielded by the hogback from
18 grain falling through the drum.

19
20 The Examiner is requested to withdraw the rejection and to allow the claim.

21
22 22. At page 8 paragraph 38 the Examiner states that in claim 14, it is unclear
23 whether "the bottom opening" refers to the bottom opening recited in line 3 of claim 1 or
24 the bottom opening recited in line 10 of claim 1.

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Application No. 09/638,017

1 Claim 14 has been cancelled.

2
3 23. At page 8 paragraph 39 and 40 the Examiner rejects claim 14. Claim 14 has
4 been cancelled.

5
6 24. At page 8 paragraph 41 the Examiner states that claim 17 is rendered indefinite
7 by the limitation "conduit means", because "conduit" is not a function.

8 Claim 17 has been amended as follows:

9 fluid flow means (84) ~~conduit means~~ leading from the exterior into the interior of
10 the drum for conducting liquid chemicals into the drum for mixing with the grains
11 in the drum.

12
13 The Examiner is requested to withdraw the rejection and allow claim 17 as
14 amended.

15
16 **VII. CLAIM REJECTIONS 35 USC 102**

17 At paragraphs 42-44 the Examiner sets forth Claim Rejections under 35 USC 102.
18 **A. Rejections under 35 USC 102 under Russell:** At paragraph 43 the Examiner rejects
19 claims 1-2, 6, 9-12 and 14-17 under 35 USC 102(b) as being anticipated by Russell, US
20 2,204,029.

21 Your applicant has discussed the structure of Russell relative to the structure of
22 your present applicant's invention and has both distinguished the structures and or
23 amended the claims so that the structures are different. A rejection for anticipation under
24 section 102 requires that each and every limitation of the claimed invention be disclosed in

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Application No. 09/638,017

1 a single prior art reference. The Examiner is respectfully referred to the following
2 subsection C. Law regarding 35 U.S.C. 102.

3
4 **Regarding claim 1:** The Examiner states in part, at page 8/paragraph that
5 "...Russell('029) discloses...a spreader (20, the uppermost one) mounted on the shaft
6 adjacent the top of the drum..." The Examiner's attention is respectfully drawn to the
7 "spreader 20" of Russell ('029) where it is seen that the "spreader 20", described in
8 Russell Column 2/lines 35-44, are

9 "...fixed and rotatable sweeps or blades 19 and 20 each being arcuately curved
10 from end to end and provided with scraping edges for coaction with the plates or
11 discs 15 and 16, it being understood that the blades or sweeps have wiping contact
12 with said plates or discs, the fixed blades or sweeps coacting with the rotatable
13 discs or plates while the rotatable blades or sweeps coact with the fixed plates or
14 discs.."

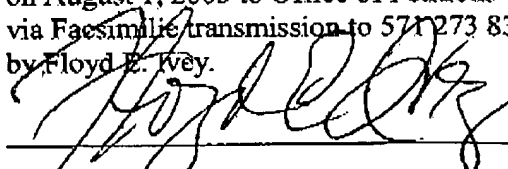
15
16 Your applicant respectfully observes that the "spreader 20" of Russell is quite
17 unlike the "spreader 90" of the present invention. The "spreader 20" of Russell comprises
18 blades 19 and 20 which have wiping contact with plates 15 and 16.

19 The Examiner will appreciate the distinctly different structure of the "spreader 90"
20 of the present invention. There, as described at the present Application Page 7/lines 18-24
21 as:

22 Mounted on the upper end of the shaft 68 above the bearing support 74 is a
23 rotary spreader 90 (Fig. 5), also shown in Fig. 3. This spreader rotates with the
24 shaft and includes a bottom plate 92, of conical shape, and vertical blades 94

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Application No. 09/638,017


41
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1 opening radially outwardly, following the slope of the bottom plates, i.e.,
2 downwardly. The bottom plate and blades have a central opening 96, for receiving
3 the upper bearing 70.

4
5 The Russell "spreader 20" has no bottom but rather coacts with plates or discs 15,
6 16. The "spreader 90" of the present invention has a conically shaped bottom plate 92 and
7 vertical blades 94 opening radially outwardly, following the slope of the bottom plates,
8 i.e., downwardly. The bottom plate and blades have a central opening 96, for receiving the
9 upper bearing 70.

10 Your applicant has amended Claim 1 to include the limitation "the spreader (90)
11 having a bottom (92) which is of conical shape." Your applicant respectfully urges the
12 Examiner to find that this amendment distinguishes the present invention and claim 1 from
13 Russell and requests the Examiner to withdraw the rejections to claim 1.

14
15 **Regarding Claim 2:** At page 9 the Examiner states "Regarding claim 2, the drum
16 has a top cover (11) in which the top opening is formed..." The Examiner is respectfully
17 directed to Russell re: element (11) which is addressed at Russell column 1/line 48 as

18 "...a spider 11 detachably secured onto the walls of the drum by stud bolts 12..."

19 Spider (11) of Russell is depicted at Fig. 2 as a four legged structure. The spider
20 (11) of Russell is distinguished from claim 2 of the present application re: "a top cover in
21 which the top opening is formed" by reference to Fig. 4 and 5. There the Examiner will
22 find "**top closure plate 48** shown in Fig. 4 is also shown in Fig. 5, this plate having a
23 radially extended peripheral flat flange 64, detachably secured to the flange 60, and welded
24 to the tube 52 **around the feed hole 50.** (Specification page 6/lines 15-18).

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Application No. 09/638,017

1 Claim 2 has been amended to state "...the drum has a top closure plate (48) cover
2 in..." and with each reference to "top cover" amended to "top closure plate (48)" in Claim
3 2.

4 Claim 2 has been further amended to state:
5 and
6 a downwardly directed cone shaped conical bottom closure plate (54), with a
7 central discharge opening (56) forming the bottom opening and forming a bottom
8 bowl, the bottom closure plate (54) secured to the surrounding wall, the bottom
9 bowl coaxially positioned with the drum and surrounding imperforate element
10 positioned for receiving the grain falling through the drum.
11

12 Your applicant respectfully observes the structural differences between the "spider
13 (11)" of Russell and the "top closure plate (48)" of the present invention. Your applicant
14 respectfully contends that Russell does not anticipate the present invention and requests
15 the Examiner to withdraw the rejection to claim 2.
16

17 The Examiner, re: Claim 2, states that Russell discloses that "...the drum includes a
18 flange unit (6) on the top cover having a central opening co-axial with the top opening of
19 the drum..." Your applicant respectfully notes that numerical identifier (6) of Russell is
20 found at column 1/line 38 stating "...equipped with barrels 6 through which extend...".
21 The Examiner may have intended to reference numerical identifier (26) of Russell which,
22 from Figure 2 of Russell has an appearance of a flange. However, in Russell at column
23 3/line 26 there is stated "An outer jacket 26 is provided..."

24 Thus your applicant respectfully urges the Examiner to find that there is no "flange
25

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Application No. 09/638,017

43
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unit" depicted or claimed in Russell, contends that Russell does not anticipate the present invention re: a "flange unit" and requests the Examiner to withdraw the rejection of claim2.

Regarding claim 3: The Examiner, at page 9, states that "Regarding claim 3, the treater includes upper and lower first bearing means (9,10) for supporting the shaft, second means (11) for supporting the bearing means within the drum, the second supporting means being operable for detachably mounting the second supporting means on the surrounding wall..." It is respectfully noted that your applicant does not find a "second means (11)" in Russell but recalls "spider 11" from Russell column 1/line 48.

Nevertheless, claim 3 has been amended to add:

the spreader (90) bottom plate (92) having vertical blades (94) opening radially outwardly following the downward slope of the bottom plate (92).

And, claim 8 has been amended as follows:

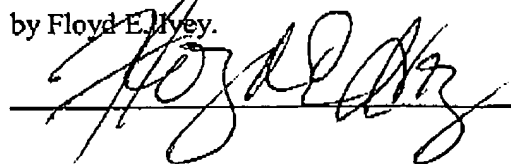
and the spreader (90) bottom plate (92) and blades (94) have a central opening (96), for receiving the upper bearing 70.

Having amended claim 3 and 8 your applicant respectfully requests the Examiner to withdraw the rejection and to allow the claims as amended.

Regarding claim 6: At page 9 the Examiner states "Regarding claim 6, the treater includes a rotary applicator (second blades 20 from top in Fig. 1) between the spreader (uppermost blades 20 in Fig. 1) and the upper bowl (second bowl 16 from top in Fig. 1, the

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by Floyd E. Ivey.

Application No. 09/638,017



1 applicator is mounted on the shaft and is rotatable therewith (see Fig. 1; col. 2, lines 35-
2 36).

3 Your applicant again respectfully distinguishes, structurally, the structure of
4 Russell identified as sweeps or blades 19 and 20 (Russell Col. 2/line 36) which is
5 addressed additionally in your applicants response to the Examiner's comments re: claim 1
6 in this section. The "sweeps or blades 19 and 20" of Russell do not have the structure of
7 the "applicator" of claim 6 of this applicants application. The Examiner will find the
8 "applicator" of the present invention described at the specification page 8/lines 1-5 as
9 follows:

10 Mounted on the shaft 68, below the bearing support 74, is an applicator 100 (Figs.
11 9 and 10). This applicator includes a central hub 102, secured to the shaft, and a
12 bottom plate 101, and vertical radial blades 106. This applicator is of lesser depth
13 than the spreader 90.
14

15 Claim 6 has been amended as follows:

16
17 the applicator (100) has a central hub (102) secured to the shaft, and a bottom plate
18 (101) with vertical radial blades (106); the applicator (100) is of lesser depth than the
19 spreader (90), and
20

21 Your applicant respectfully requests the Examiner to withdraw the rejection to
22 claim 6 and to allow the claim.
23

24 **Regarding claim 9:** At page 9 the Examiner states "Regarding claim 9, the treater
25

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Application No. 09/638,017

45
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1 includes an upper rotary coater (third blades 20 from top in Fig. 1) below the upper bowl
2 and secured to the shaft. The Examiner's attention is drawn to the Specification page 8
3 commencing at line 20 to page 9 line 2 where the coater's structure is described as
4 follows:

5 Mounted below the upper bowl 104, is an upper coater 112, which is generally
6 similar to the spreader 90, but of different dimensions, being smaller in diameter
7 than the latter. The coater includes a central hub 114, by which it is mounted on the
8 shaft 68 for rotation therewith. It includes bottom plates 116, and vertical- radial
9 blades 118 opening radially outwardly.

10

11

12 Claim 9 has been amended to depend from claim 3 and further as follows:

13

14 , and

15 the upper coater (112), is smaller in diameter than the spreader (90) and has a
16 central hub 114 by which the upper coater (112) is mounted on the shaft 68 for
17 rotation therewith; the upper coater (112) having bottom plates (116) of conical
18 shape, and vertical- radial blades (118) opening radially outwardly.

19

20

21 Having amended claim 9, your applicant respectfully requests the Examiner to
22 withdraw the rejection and to allow the claim.

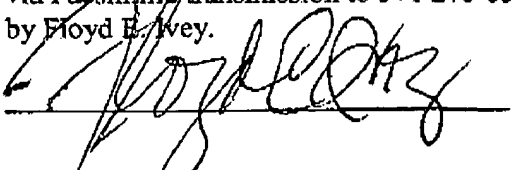
23

24 **Regarding claim 10:** At page 9 the Examiner states "Regarding claim 10, the

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Application No. 09/638,017



46

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1 treater includes a central bowl (third bowl 16 from top in Fig. 1) substantially identical
2 with the upper bowl below the upper coater, and mounted in the drum similarly to the
3 upper bowl (see fig. 1).

4 Claim 9 has been amended re: the structure of the upper coater (112). Claim 10
5 depends from claim 9. Your applicant respectfully requests the Examiner, in light of the
6 amendment of claim 9, to withdraw the rejection of claim 10 and to allow the claim.

7
8 **Regarding claim 11:** At page 9-10 the Examiner states "Regarding claim 11, the
9 treater includes a lower rotary coater (bottom blade 20 in Fig. 1) substantially identical
10 with the upper rotary coater and mounted below the central bowl (see discussion of
11 claim 11 with regard to section 112 above) and mounted similarly to the upper rotary
12 coater."

13 The matter of the upper rotary coater (112) has been addressed in response to the
14 rejection of claim 9. Claim 9 has been amended to depend from claim 3 and further to add
15 structure to the upper coater (112). Claim 11 depends from claim 10 which depends from
16 claim 9. Regarding the lower rotary coater your applicant respectfully refers to the
17 Specification page 9/lines 15-20 which state the following:

18 Below the central bowl 120, is a lower coater 124, which is identical in
19 construction with the upper coater 112, and operable for throwing the mixture that
20 falls into it from the central bowl 120, in outward direction against the surrounding
21 wall. At this point the mixture as it engages the outer wall 20 continues to flow
22 down through the drum.

23
24 Claim 11 is amended to provide structure to the lower coater (124) as was provided

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Application No. 09/638,017


47
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1 in the amendment of claim 9 regarding the upper rotary coater (112) as follows:

2 and

3 the lower rotary coater (124), is smaller in diameter than the spreader (90) and has
4 a central hub 114 by which the lower rotary coater (124) is mounted on the shaft 68
5 for rotation therewith; the lower coater (124) having bottom plates (116) of conical
6 shape, and vertical- radial blades (118) opening radially outwardly.

7
8 Having amended claim 11, your applicant respectfully requests the Examiner to
9 withdraw the rejection of claim 11 and to allow the claim as amended.

10

11 **Regarding Claim 12:** At page 10 the Examiner states "Regarding claim 12, the
12 treater includes a hogback (19, 21, 23, 24, 25) adjacent the lower end of the drum and
13 below all the above instrumentalities and structures, the hogback being constituted by a
14 rigid elongated piece extending diametrically across the drum and secured at its end to the
15 surrounding wall, and lower bearing means (9) mounted on and under the hogback and
16 supporting the shaft."

17 The Examiner's attention is drawn to the nature or structure of a "hogback" as an
18 inverted "V" structure (Webster's New Collegiate Dictionary, Second Edition) being "any
19 ridge with a sharp summit and steeply sloping sides. Your applicant does not find a
20 similar "ridge" or inverted "V" structure found in Russell. The Examiner will find in the
21 Specification page 9/line 21 to page 10/line 2 the description of the structure of the
22 hogback as follows:

23 The lower bearing support 76, identified above, is constructed as a
24 hogback. Figs. 11 and 12 show its detail construction. It includes a main

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Application No. 09/638,017

48
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1 structural member 125, made up of a pair of plates 126, disposed at an
2 angle to each other and together extending diametrically across the drum. It
3 is disposed with the apex of the angle upwardly.

4
5 Claim 12 has been amended as follows:

6
7 the hogback being constituted by a rigid elongated piece 5 extending diametrically
8 across the drum and secured at its ends to the surrounding wall includes a main
9 structural member 125, made up of a pair of plates 126, disposed at an angle to
10 each other and is disposed with the apex of the angle upwardly, and

11
12 Having amended claim 12 and setting forth structural distinctions your applicant
13 respectfully requests the Examiner to withdraw the rejection of claim 12 and to allow the
14 claim as amended.

15
16 **Regarding claim 14:** At page 10 the Examiner states "Regarding claim 14, the
17 drum includes a bottom closure element (8) of downwardly directed cone shape, forming a
18 bottom bowl, secured to the surrounding wall, the bottom bowl includes the bottom
19 opening positioned coaxially with the drum, and surrounding imperforate element."

20 Claim 14 has been cancelled. Claim 2 has been further amended as follows:

21 and
22 a downwardly directed cone shaped conical bottom closure plate (54), with a
23 central discharge opening (56) forming the bottom opening and forming a bottom
24 bowl, the bottom closure plate (54) secured to the surrounding wall, the bottom

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Application No. 09/638,017

bowl coaxially positioned with the drum and surrounding imperforate element positioned for receiving the grain falling through the drum.

Regarding claim 15: At page 10 the Examiner states "Regarding claim 15, the treater includes in addition to the upper bowl, a central bowl (third bowl 16 from top in Fig. 1) and a bottom bowl (bottommost bowl 16 in Fig. 1) all concentric with the axis and wiper (20) secured to the shaft and extending into the respective bowls for wiping the floors of the bowls."

Claim 1 has been amended. Claim 15 depends from Claim 1. Your applicant respectfully requests the Examiner to withdraw the rejection of claim 15 in light of the amendment of claim 1.

Regarding claim 16: At page 10 the Examiner states "Regarding claim 16, Russell ('029) discloses a treater comprising, a cylindrical drum (5), having a top opening and a bottom opening (see fig. 1); the drum including means for mount (see fig. 1); the drum including means for mixing (13, 14, 20); the apparatus including power means (see col. 1, lines 53-55)."

Claim 16 has been amended to add the following:

a spreader mounted on the shaft adjacent the top of the drum, and adapted to receive seed flowing downwardly through the top opening, and operable for throwing the seed outwardly into engagement with the surrounding wall, the spreader (90) having a bottom (92) having a conical shape, the spreader (90) bottom plate (92) having vertical blades (94) opening radially

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Application No. 09/638,017

50

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Regarding Claim 1: At page 10-11 the Examiner states "Regarding claim 1, Shiner ('696) discloses a treater comprising, a drum (1), having a surrounding wall and a top opening and a bottom opening (see fig. 1); a rotatable shaft (5) mounted in the drum on a vertical axis; a spreader (23, the uppermost one) mounted on the shaft adjacent the top of the drum; and upper bowl (18, for example the third one from the top in Fig. (1) below the

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Application No. 09/638,017

51

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1 spreader, and tapering downwardly and having a bottom opening (22) and being otherwise
2 imperforate and secured to the surrounding wall without space between itself and the
3 surrounding wall and all material thrown from the spreader will flow into the upper bowl
4 and material will flow through the bottom opening in the upper bowl and through the
5 bottom opening of the drum (see fig. 1); and the treater includes power means (11, 12) for
6 rotating the shaft."

7 The Examiner's attention is respectfully directed to the spreader (90) of the present
8 invention seen at Fig. 1 and Fig. 14 and discussed in this response in the section
9 designated "**CLAIM REJECTIONS 35 USC 102**", A. Rejections under 35 USC 102
10 under Russell: and in detail at the entry thereunder "**Regarding claim 1:** where the
11 Examiner finds reference to the Specification of the present invention in describing the
12 structure of the present spreader as follows:

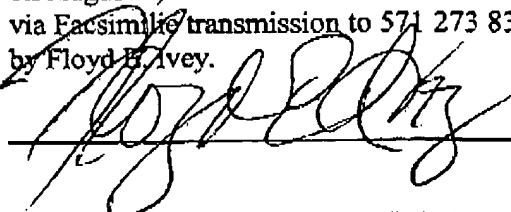
13 In the present Application Page 7/lines 18-24 the spreader (90) is described as:

14 Mounted on the upper end of the shaft 68 above the bearing support 74 is a
15 rotary spreader 90 (Fig. 5), also shown in Fig. 3. This spreader rotates with the
16 shaft and includes a bottom plate 92, of conical shape, and vertical blades 94
17 opening radially outwardly, following the slope of the bottom plates, i.e.,
18 downwardly. The bottom plate and blades have a central opening 96, for receiving
19 the upper bearing 70.

20
21 The Examiner is drawn to the structure of Shiner identified by the Examiner as a
22 "spreader (23)" which illustrates, in Shiner Fig. 1 and in detail at Shiner Fig. 4 parallel
23 perforated plates (23, 24) having a hub (25) received by a shaft which is apparently
24 designated (5). The spreader (90) of the present invention is dissimilar to that of Shiner.

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Application No. 09/638,017


52
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1 Claim 1 has been amended to recite structure from the present spreader (90) as follows:
2 a spreader mounted on the shaft adjacent the top of the drum, and adapted to
3 receive seed flowing downwardly through the top opening, and operable for
4 throwing the seed outwardly into engagement with the surrounding wall, the
5 spreader (90) having a bottom (92) which is of conical shape.

6
7 Having amended claim 1 to add structure distinct from that of Shiner your
8 applicant respectfully requests the Examiner to withdraw the rejection under Shiner and to
9 allow Claim 1 as amended and all claims depending from Claim 1.

10
11 **Regarding claim 2:** The Examiner, at page 11 states "Regarding claim 2, the drum
12 has a top cover (see fig. 1) in which the top opening is formed, and the drum includes a
13 flange unit (F') on the top cover having a central opening co-axial with the top opening of
14 the drum and a flange element spaced axially from the top cover and extending
15 transversely from the axis, for detachably securing it to and over head supporting structure
16 (see fig. 1).

17 The Examiner is directed to the Response to the 35 USC 102(b) rejections under
18 Russell at the section designated "**Regarding claim 2.**" There the amendment to Claim 2
19 is found to include:

20 and
21 a downwardly directed cone shaped conical bottom closure plate (54), with a
22 central discharge opening (56) forming the bottom opening and forming a bottom
23 bowl, the bottom closure plate (54) secured to the surrounding wall, the bottom
24 bowl coaxially positioned with the drum and surrounding imperforate element

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Application No. 09/638,017

53
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1 positioned for receiving the grain falling through the drum.

2

3 Having amended Claim 2 your applicant respectfully requests the Examiner to
4 withdraw the rejection under Shiner and to allow Claim 2 as amended and all claims
5 depending therefrom.

6

7 **Regarding claim 3:** The Examiner states at page 11 "Regarding claim 3, the
8 treater includes upper and lower first bearing means (7,6) for supporting the shaft, second
9 means for supporting the bearing means within the drum, the second supporting means
10 being operable for detachably mounting the second supporting means on the surrounding
11 wall (see fig. 1)."

12 Claim 3 has been amended as follows:

13 the spreader (90) bottom plate (92) having vertical blades (94) opening radially
14 outwardly following the downward slope of the bottom plate (92).

15 And, claim 8 has been amended as follows:

16 and the spreader (90) bottom plate (92) and blades (94) have a central opening
17 (96), for receiving the upper bearing 70.

18

19 The Examiner if further referenced to that section regarding the present Response
20 to the 35 USC 102(b) rejections under Russell at the portion of the Response designated
21 "Regarding claim 3."

22 Having amended Claim 3 the applicant respectfully requests the Examiner to
23 withdraw the rejection of Claim 3 under Shiner and to all the claim and all claims
24 depending therefrom.

25

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Application No. 09/638,017

29

54
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1 **Regarding claim 6:** The Examiner states at page 11 "Regarding claim 6, the
2 treater includes a rotary applicator (second 23 from top in Fig. 1) between the spreader
3 (uppermost 23 in Fig. 1) and the upper bowl (third bowl 18 from top in Fig. 1), the
4 applicator is mounted on the shaft and is rotatable therewith page. 2, lines 24-26).

5 Claim 6 depends from claim1 which has been amended. Claim 6 has been
6 amended, as discussed in the section Re: Russell 35 USC 102(b) rejections, as follows:

7 (100) has a central hub (102) secured to the shaft, and a bottom plate (101) with
8 vertical radial blades (106); the applicator (100) is of lesser depth than the spreader
9 (90), and

10

11 Your applicant notes that there is no similar structure described in Shiner.
12 Accordingly, your applicant respectfully requests the Examiner to withdraw the rejection
13 of Claim 6 and to allow the claim and claims depending therefrom as amended.

14

15 **Regarding claim 9:** The Examiner states, at page 12, "Regarding claim 9, the
16 treater includes an upper rotary coater (third 23 from top in Fig. 1) below the upper bowl
17 and secured to the shaft."

18 The Examiner is referred to the section under Remarks re: Russell and "**Regarding**
19 **claim 9:** " and the amendment of Claim 9 to depend from claim 3 and further to include
20 the following:

21 , and

22 an upper coater (112), is smaller in diameter than the spreader (90) and has a
23 central hub 114 by which the upper coater (112) is mounted on the shaft 68 for
24 rotation therewith; the upper coater (112) having bottom plates (116), and vertical-

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Application No. 09/638,017

55
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1 radial blades (118) opening radially outwardly.

2

3 In light of said amendment of claim 9, your applicant respectfully requests the
4 Examiner to withdraw the rejection of claim 9 under Shiner and to allow the claim and all
5 claims depending therefrom.

6

7 **Regarding claim 10:** At page 12 the Examiner states "Regarding claim 10, the
8 treater includes a central bowl (fourth bowl 18 from top in Fig. 1) substantially identical
9 with the upper bowl below the upper coater, and mounted in the drum similarly to the
10 upper bowl (see fig. 1)."

11 The Examiner is respectfully referred to the above Response under Shiner to Claim
12 9. Claim 10 depends from claim 9. Claim 9 has been amended. Your applicant
13 respectfully requests the Examiner to withdraw the rejection of claim 10, as amended, and
14 to allow the claim and all claims depending therefrom.

15

16 **Regarding claim 11:** At page 12 the Examiner states that "Regarding claim 11, the
17 treater includes a lower rotary coater (fourth 23 in Fig. 1) substantially identical with the
18 upper rotary coater and mounted below the central bowl (see discussion of claim 11 with
19 regard to section 112 above) and mounted similarly to the upper rotary coater."

20 The Examiner is respectfully referred to the discussion of the rejection of claim 11
21 under Russell and the attendant amendment of claim 11. The Examiner will appreciate the
22 structural distinction between the "lower rotary coater (fourth 23 in Fig. 1)" of Shiner from
23 the "lower rotary coater (112 or 124)" of the present invention. In light of the amendments
24 to claim 11, your applicant respectfully requests the Examiner to withdraw the rejection of

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Application No. 09/638,017

28

56
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1 claim 11 and to allow the claim as amended and all claims depending therefrom.

2

3 **Regarding claim 12:** At page 12 the Examiner states "Regarding claim 12, the
4 treater includes a hogback adjacent the lower end of the drum and below all the above
5 instrumentalities and structures, the hogback being constituted of a rigid elongated piece
6 extending diametrically across the drum and secured at its end to the surrounding wall, and
7 lower bearing means (8) mounted on and under the hogback and supporting the shaft (see
8 fig. 1)."

9 Your applicant observes bearings (9) and (6) in fig. 1 of Shiner with the lower
10 bearing appearing to be (6). Your applicant has addressed the "hogback" in the Response
11 to the 35 USC 102(b) rejection under Russell and respectfully directs the Examiner to that
12 discussion and the attendant amendment of claim 12.

13 In light of the amendment to claim 12, your applicant respectfully requests the
14 Examiner to withdraw the rejection of claim 12 and to allow the claim and all claims
15 depending therefrom.

16

17 **Regarding claim 14:** At page 12 the Examiner states that "Regarding claim 14, the
18 drum includes a bottom closure element (bottommost bowl 18 in fig. 1) of downwardly
19 directed cone shape, forming a bottom bowl, secured to the surrounding wall, the bottom
20 bowl includes the bottom opening (22) positioned coaxially with the drum, and
21 surrounding imperforate element "

22 Claim 14 has been cancelled.

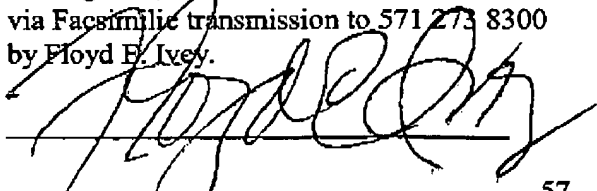
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24 **Regarding claim 16:** at Page 12, the Examiner states that "Regarding claim 16,

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Application No. 09/638,017



57

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1 Shiner ('696) discloses a treater comprising a cylindrical drum (1) having top and bottom
2 openings (see fig. 1); the drum including means for mounting (F, F'), the drum including
3 means for mixing (5, 3, 25); the apparatus including power means (11,12)."

4 Claim 16 has been amended. The Examiner is referred to the discussion of Claim
5 16 in relation to the 35 USC 102(b) rejection under Russell. Claim 16 has been amended
6 as follows:

7 a spreader (90) mounted on the shaft adjacent the top of the drum, and adapted to
8 receive seed flowing downwardly through the top opening, and operable for
9 throwing the seed outwardly into engagement with the surrounding wall, the
10 spreader (90) having a bottom (92) having a conceal shape,
11

12 With the amendment of claim 16, your applicant respectfully requests the
13 Examiner to withdraw the rejection of claim 16 and all claims depending therefrom.
14

15 **Regarding claim 17:** At page 12 the Examiner states "Regarding claim 17, the
16 apparatus includes conduit means (17)."

17 Claim 17 depends from Claim 16. Claim 16 has been amended. Your applicant
18 respectfully requests that the rejection be withdrawn and the claim allowed.
19

20 **C. Law regarding 35 U.S.C. 102.**

21 A rejection for anticipation under section 102 requires that each and every
22 limitation of the claimed invention be disclosed in a single prior art reference. *In re*
23 *Aventis Pharmaceuticals, Inc.* 372 F.Supp.2d 430, 434-35 (D.N.J.,2005); *In Re Paulsen*,
24 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); For a prior art reference
25

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Application No. 09/638,017

1 to anticipate in terms of 35 U.S.C. S 102, every element of the claimed invention must be
2 identically shown in a single reference. The elements must be arranged as in the claim
3 under review. (*In Re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990).
4 Prior art anticipates an invention ... if a single prior art reference contains each and every
5 element of the patent at issue, operating in the same fashion to perform the identical
6 function as the patented product. "Thus, any degree of physical difference between the
7 patented product and the prior art, NO MATTER HOW SLIGHT, defeats the claim of
8 anticipation." (*American Permahedge, Inc. v. Barcana, Inc.*, 857 F. Supp. 308, 32
9 USPQ2d 1801, 1807-08 (S.D. N.Y. 1994); *E.I. du Pont de Nemours & Co. v. Polaroid*
10 *Graphics Imaging, Inc.* 706 F.Supp. 1135, 1141-42 (D. Del. 1989); It is incumbent upon
11 the examiner to identify wherein each and every facet of the claimed invention is disclosed
12 in the applied reference. (*Ex Parte Levy*, 17 USPQ2d 1461, 1462 (Bd. Pat. App. & Int'l
13 1990)). Since the structures of the cited art differ from that shown herein, the reference
14 must be discounted as anticipating the present invention.

15 The applicant has demonstrated differences between features of the referenced
16 prior art and the present invention as specified and claimed. The applicant has presented
17 features of the present invention which are not found within the claims of either reference
18 patent. The applicant has presented law and argument to support the contention that the
19 rejection of claims under 35 U.S.C. 102(b) should be withdrawn and now respectfully
20 requests the Examiner to withdraw the rejections.

21

22

23 VIII. CLAIM REJECTIONS 35 USC 103(a)

24 At paragraphs 45-47 the Examiner sets forth Claim Rejections under 35 USC 103.

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Application No. 09/638,017

28

59
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1
2 **D. Rejections under 35 USC 103(a) under Russell:** At paragraph 46 the Examiner
3 rejects claims 4, 5, 7, 8 and 13 as being unpatentable over Russell, US 2,204,029.

4
5 **Regarding claim 4:** At page 13 the Examiner states "Regarding claim 4, Russell
6 ('029) further discloses the drum is cylindrical (see col. 1, lines 35-37) and includes an
7 upper bearing support (11) extending diametrically across the drum and including spaced
8 apart side bars positioned vertically on edge, and having end plates also positioned on edge
9 by which the upper bearing support is detachably secured to the surrounding wall (see figs.
10 1 and 2; col. 1, lines 46-49), the bearing support also includes a central horizontal plate
11 (just radially outside 10, see figs. 1 and 2), the upper bearing means (10) is detachably and
12 fixedly mounted on the plate, whereby great space is provided for material to flow (see fig.
13 2). Russell ('029) fails to disclose the bearing support being between the spreader and the
14 upper bowl. However, it has been held that it is obvious to rearrange parts in such a
15 manner ..."

16 Claim 4 has been amended to depend from Claim 3. Claim 3 depends from claim
17 1. The amendment of claim 1 adds structure re: the spreader (90) as follows: the spreader
18 (90) having a bottom (92) which is of conical shape. The amendment of claim 3 adds
19 further structure re: the spreader (90) as follows: the spreader (90) bottom plate (92)
20 having vertical blades (94) opening radially outwardly following the downward slope of
21 the bottom plate (92).

22 Your applicant respectfully contends that Russell ('029) does not teach, direct or
23 suggest a spreader structure of the spreader (90) of the present invention. Hence, Russell
24 is not a prior art reference which renders obvious claim 4 of your applicant's invention.

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Application No. 09/638,017

1 The Examiner, in light of the amendment of claim 4 depending from 3 which depends
2 from claim 1, is requested to withdraw the rejection over Russell and to allow claim 4 as
3 amended.

4
5 **Regarding claim 5:** At page 13 the Examiner states "Regarding claim 5, the
6 support includes holes (see fig. 2)."

7 Claim 5 depends from Claim 4 which in turn depends from claim 3. With the
8 amendment of claim 1 and 3 and in amending claim 4 to depend from claim 3, your
9 applicant respectfully urges the Examiner to find that Russell does not render claim 5
10 obvious and asks the Examiner to withdraw the rejection and allow claim 5 and all claims
11 depending therefrom.

12
13 **Regarding claim 7:** At page 13 the Examiner states "Regarding claim 7, a rotary
14 applicator (20, second one from top) is disclosed and is between the upper bearing support
15 and the upper bowl."

16 Claim 7 depends from Claim 5. In light of the amendments of claim 1 and 3, from
17 which claim 5 depends, your applicant urges the Examiner to find that Russell does not
18 render claim 7 obvious and asks the Examiner to withdraw the rejection and allow claim 7
19 and all claims depending therefrom.

20
21 **Regarding claim 8:** At page 13-14 the Examiner states "Regarding claim 8, the
22 spreader and applicator include a bottom plate (15) extending substantially its full area and
23 vertical blades (20) extending upwardly extending upwardly from the bottom plate."

24 The Examiner is referred to the discussion of the structure of Russell (spreader (19,

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Application No. 09/638,017

1 20)) indicated by the Examiner to have the structure of the spreader (90) of the present
2 invention. The indicated discussion is found at I. **CLAIM REJECTIONS 35 USC 102,**
3 **A. Rejections under 35 USC 102 under Russell: Regarding claim 1:** Here the
4 Examiner will be refreshed in the structural distinction between the "spreader" of Russell
5 from the spreader (90) of the present invention.

6 Claim 8 depends from Claim 7. In light of the amendments of claim 1 and 3, from
7 which claim 5 and 7 depends, your applicant urges the Examiner to find that Russell does
8 not render claim 8 obvious and asks the Examiner to withdraw the rejection and allow
9 claim 8 and all claims depending therefrom.

10

11 **Regarding claim 13:** At page 14 the Examiner states "Regarding claim 13, it is
12 quite unclear what is being claimed and this claim appear not to be enabled (see discussion
13 with regard to section 112 above). As best understood by the examiner, claim 13 is
14 unpatentable over Russell ('029). Russell states the "[p]ower is applied to the shaft 13 in
15 any well known manner" (col. 1, lines 53-55)."

16 The "power means" of claim 13 is examined by reference to the Specification at
17 page 12/lines 14-24 which states:

18 A drivemotor 151 (Fig . 13) is mounted on an exterior platform 152, and a drive
19 belt 153 therefrom drives the central shaft 68 (see also Fig . 14) . This belt
20 extends through the void zone 150, and is thus protected from the falling grain
21 mixture, but however, the grain mixture is enabled 20 to fall freely without
22 interruption over the top of the hogback 76. Diagonal braces 154 (Fig. 13), secured
23 at their upper ends to the drum, provide support for the platform, and thus the drive
24 motor, and this structure and support are part of the self-contained nature of the

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Application No. 09/638,017



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1 device.

2
3 Thus claim 13 is respectfully contended to convey the following: the first phrase
4 "power means mounted on the exterior of the drum, and" claims that a power means,
5 including a drivemotor, is mounted on the exterior of the drum; the second phrase "power
6 transmitting means operably connecting the power means and the shaft and extending into
7 the drum and underlying the hog back throughout its extent to the shaft and thereby
8 shielded by the hogback from grain falling through the drum." claims that a means exists
9 to transmit the power means to the shaft, with that means shielded by the inverted "V"
10 shaped hogback, to rotate the shaft. We see referenced in the indicated portion of the
11 specification a transmission means to include a belt. Hence, a person of ordinary skill in
12 the drive arts will appreciate that a drive belt will interconnect the motor with the shaft for
13 operational rotation.

14 In light of this argument your applicant respectfully requests the Examiner to
15 withdraw the rejection of claim 13 and all claims depending therefrom and to allow the
16 claim.

17
18 **E. Rejections under 35 USC 103(a) under Shiner ('696):** At paragraph 47 the Examiner
19 rejects claims 4, 5 and 7 as being unpatentable over Shiner ('696).

20
21 **Regarding claim 4:** At page 14 the Examiner states "Regarding claim 4, Shiner
22 ('696) further discloses the drum is cylindrical (see page 1, line 84) and includes an upper
23 bearing support (20,27, second from top in fig. 1) between the spreader and the upper bowl
24 extending diametrically across the drum and includes spaced apart side bars (20)

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Application No. 09/638,017

1 positioned vertically on edge and having end plates also positioned on edge by which the
2 upper bearing support is secured to the surrounding wall, the upper bearing support also
3 includes a central horizontal plate (19) secured to the side bars, the bearing means is
4 mounted on the plate whereby relatively great space is provided for material to flow (see
5 figs. 1 and 2). Shiner ('696) fails to explicitly disclose that the support is detachable.
6 However, it has been held that making a part detachable is obvious.... In the instant case,
7 it is considered that it would have been obvious to one of ordinary skill in the art to have
8 made the support detachable, to facilitate maintenance of the apparatus."

9 Claim 4 has been amended to depend from Claim 3. Claim 3 depends from claim
10 1. The amendment of claim 1 adds structure re: the spreader (90) as follows: the spreader
11 (90) having a bottom (92) which is of conical shape. The amendment of claim 3 adds
12 further structure re: the spreader (90) as follows: the spreader (90) bottom plate (92)
13 having vertical blades (94) opening radially outwardly following the downward slope of
14 the bottom plate (92).

15 Your applicant respectfully contends that Shiner does not teach, direct or suggest a
16 spreader structure of the spreader (90) of the present invention. Hence, Shiner is not a
17 prior art reference which renders obvious claim 4 of your applicant's invention. The
18 Examiner, in light of the amendment of claim 4 depending from 3 which depends from
19 claim 1, is requested to withdraw the rejection over Shiner and to allow claim 4 as
20 amended.

21
22 **Regarding claim 5:** At page 14-15 the examiner states "Regarding claim 5, the
23 support includes hole (See fig. 2)."

24 Claim 5 depends from Claim 4 which in turn depends from claim 3. With the

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Application No. 09/638,017

1 amendment of claim 1 and 3 and in amending claim 4 to depend from claim 3, your
2 applicant respectfully urges the Examiner to find that Shiner does not render claim 5
3 obvious and asks the Examiner to withdraw the rejection and allow claim 5 and all claims
4 depending therefrom.

5
6 **Regarding claim 7:** At page 15 the Examiner states "Regarding claim 7, the
7 treater includes a rotary applicator (24, second from top in Fig. 1) positioned between the
8 upper bearing support and the upper bowl."

9 Claim 7 depends from Claim 5. In light of the amendments of claim 1 and 3, from
10 which claim 5 depends, your applicant urges the Examiner to find that Shiner does not
11 render claim 7 obvious and asks the Examiner to withdraw the rejection and allow claim 7
12 and all claims depending therefrom.

13
14 **F. Law regarding 35 U.S.C. 103.**

15 The absence of a feature similar to the feature or features of the present invention
16 are respectfully argued as references which teach away from the disclosed and claimed
17 invention and thus are not appropriately a basis of rejection under 103. *In re Gurley* 27
18 F.3d 551 at 553(1994 cafc). In general a reference will teach away if the line of
19 development flowing from the references disclosure is unlikely to be productive of the
20 result sought by the applicant. The lack of the elements, in the citations, as found in your
21 applicant's structure and method, demonstrates that the teachings of the citations do not
22 flow toward the elements of your applicant's invention.

23 The Examiner has urged prior art alone and in combination as rendering obvious
24 the present invention. However, there is not demonstrated teaching, suggestion or

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Application No. 09/638,017

1 motivation to so combine the several components in the manner done by your present
2 applicant. The Court in *In re Fulton* 391 F.3d 1195, 1199-1200 (C.A.Fed. 2004) noted the
3 following:

4 Obviousness is a "question of law based on underlying findings of fact." *In re*
5 *Gartside*, 203 F.3d 1305, 1316 (Fed.Cir.2000). The Board's factual findings are
6 upheld unless they are unsupported by substantial evidence. *Id.* Substantial
7 evidence is "such relevant evidence as a reasonable mind might accept as adequate
8 to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229-30, 59
9 S.Ct. 206, 83 L.Ed. 126 (1938). What the prior art teaches, whether it teaches away
10 from the claimed invention, and whether it motivates a combination of teachings
11 from different references are questions of *1200 fact. *Id.*: *In re Berg*, 320 F.3d
12 1310, 1312 (Fed.Cir.2003). Other factual findings related to obviousness may
13 include "(1) the scope and content of the prior art; (2) the level of ordinary skill in
14 the prior art; (3) the differences between the claimed invention and the prior art;
15 and (4) objective evidence of nonobviousness." *In re Dembiczak*, 175 F.3d 994,
16 998 (Fed.Cir.1999), *abrogated on other grounds In re Gartside*, 203 F.3d 1305
17 (Fed.Cir.2000) (abrogating the holding *In re Dembiczak* that the Board's findings
18 of fact are reviewed for clear error); *see also Graham v. John Deere Co.*, 383 U.S.
19 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966).

20
21 Absent a demonstrated teaching, suggestion or motivation to so combine the
22 several components, the recitation of prior art does not form a basis for rejection as
23 obvious. *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1361, 48 USPQ2d 1225,
24 1240 (Fed. Cir. 1998), rehearing denied & suggestion for rehearing in banc declined, 161

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Application No. 09/638,017

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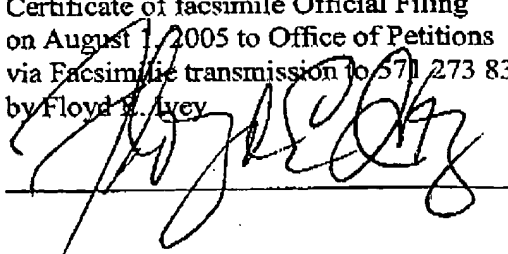
1 F.3d 1380 (Fed. Cir. 1998) ("The ultimate question is whether, from the evidence of the
2 prior art and the knowledge generally available to one of ordinary skill in the relevant art,
3 there was in the prior art an appropriate teaching, suggestion, or motivation to combine
4 components in the way that was done by the inventor."); *In re Fulton* 391 F.3d 1195, 1200
5 (C.A.Fed. 2004) ("When a rejection depends on a combination of prior art references,
6 there must be some teaching, suggestion, or motivation to combine the references." *In re*
7 *Rouffet*, 149 F.3d 1350, 1355 (Fed.Cir.1998). Stated another way, the prior art as a whole
8 must "suggest the desirability" of the combination. *In re Beattie*, 974 F.2d 1309, 1311
9 (Fed.Cir.1992) (internal quotation omitted); *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d
10 1340 (Fed.Cir.2000) ("Trade-offs often concern what is *feasible*, not what is, on balance,
11 *desirable*. Motivation to combine requires the latter." (emphasis added)). The source of the
12 teaching, suggestion, or motivation may be "the nature of the problem," "the teachings of
13 the pertinent references," or "the ordinary knowledge of those skilled in the art." *In re*
14 *Rouffet*, 149 F.3d at 1355."); *Chiuminatta Concrete Concepts, Inc. v. Cardinal Industries,*
15 *Inc.*, 145 F.3d 1303, 1312, 46 USPQ2d 1752, 1759 (Fed. Cir. 1998) ("for a claim to be
16 invalid for obviousness over a combination of references, there must have been a
17 motivation to combine the prior art references to produce the claimed invention."); *Kahn v.*
18 *General Motors Corp.*, 135 F.3d 1472, 45 USPQ2d 1608 (Fed. Cir. 1998), cert. denied,
19 119 S. Ct. 177 (1998); *Fromson v. Anitec Printing Plates, Inc.*, 132 F.3d 1437, 1447, 45
20 USPQ2d 1269, 1276 (Fed. Cir. 1997), cert. denied, 119 S. Ct. 56 (1998) ("there is no
21 suggestion or teaching in the prior art to select from the various known procedures and
22 combine specific steps, along with a new electrical structure, in the way that is described
23 and claimed by [the patentee]."); *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d
24 1573, 1578-79, 42 USPQ2d 1378, 1383, 1384 (Fed. Cir. 1997) ("the record must provide

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Application No. 09/638,017

1 a teaching, suggestion, or reason to substitute computer-controlled valves for the system of
2 hoses in the prior art. The absence of such a suggestion to combine is dispositive in an
3 obviousness determination."; "Without a suggestion or teaching to combine, [the accused
4 infringer's] case of obviousness suffers a significant deficiency."); *Kolmes v. World Fibers*
5 *Corp.*, 107 F.3d 1534, 1541, 41 USPQ2d 1829, 1833 (Fed. Cir. 1997) (the district court
6 did not err in holding the patent in suit not invalid for obviousness; the patent concerned a
7 cut-resistant yarn for use in making products such as gloves, which, unlike prior art yarns,
8 did not use metallic components such as wire; the yarn includes two core strands wrapped
9 in opposite directions around two covering strands; one core strand is fiberglass; the other
10 core strand and the covering strands are nylon or other material; the patent's claim
11 required, inter alia, that there be a two strand core and that the covering strands be
12 "wrapped about said core at the rate of 8-12 turns per inch."; a prior art reference showed
13 a yarn with a wrapping rate of 2-24 turns per inch, but the reference disclosed the use of
14 wire, and the accused infringer "has shown no suggestion or motivation to modify the
15 teaching of the [reference] with regard to non-metallic fibers."); *Litton Systems, Inc. v.*
16 *Honeywell, Inc.*, 87 F.3d 1559, 1568, 39 USPQ2d 1321, 1327 (Fed. Cir. 1996) ("[N]one
17 of the prior art references, alone or in combination, teach or suggest a method [specified in
18 the patent's claims]. The prior art simply does not contain many limitations in the claimed
19 method. Furthermore, the record discloses no teaching or suggestion to combine any of
20 these references. The absence of a suggestion to combine is telling in an obviousness
21 determination."); *B.F. Goodrich Co. v. Aircraft Braking Systems Corp.*, 72 F.3d 1577, 37
22 USPQ2d 1314 (Fed. Cir. 1996), discussed at N. 12.10(1) *infra*; *Pro-Mold and Tool Co.,*
23 *Inc. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 37 USPQ2d 1626 (Fed. Cir. 1996);
24 *Beachcombers, International, Inc. v. WildeWood Creative Products, Inc.*, 31 F.3d 1154,

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Application No. 09/638,017

1 1161, 31 USPQ2d 1653, 1659 (Fed. Cir. 1994) (the patent claims in suit were not obvious
2 in view of the prior art because the art did "not remotely suggest configuring" the device
3 as required by the claim); Heidelberg Druckmaschinen AG v. Hantscho Commercial
4 Products, Inc., 21 F.3d 1068, 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1993) ("When the
5 patented invention is made by combining known components to achieve a new system, the
6 prior art must provide a suggestion or motivation to make such a combination."). Texas
7 Instruments Inc. V. U.S. Int'l Trade Comm'n, 988 F.2d 1165, 26 USPQ2d 1018 (Fed. Cir.
8 1993) for the proposition that obviousness is not supported where the references do not
9 demonstrate to combine to produce the invention as presently disclosed.

10 The issue of viewing the present invention as a template is an inappropriate basis
11 for rejection on the basis of obviousness. The prior art "references in combination do not
12 suggest the invention as a whole claimed in the ... patent. Absent such a suggestion to
13 combine the references, respondents can do no more than piece the invention together
14 using the patented invention as a template." Heidelberg Druckmaschinen AG v.
15 Hantscho Commercial Products, Inc., 21 F.3d 1068, 30 USPQ2d 1377 (Fed. Cir. 1993
16 where the court held that "The motivation to combine references can not come from the
17 invention itself."

18 The applicant respectfully submits that the references, alone and in combination,
19 otherwise must constitute improper use of hindsight reconstruction. *In Re Pleuddeman*,
20 910 F.2d 823, 828, 15 US PQ2d 1738, 1742 (Fed. Cir. 1990); *In Re Mahurkar Patent*
21 *Litigation*, 831 F.Supp. 1354, 28 US PQ2d 1801 (N.D. Ill. 1993). The cases cited stand
22 for the rule that decomposing an invention into its constituent elements, finding each
23 element in the prior art, and then claiming that it is easy to reassemble these elements into
24 the invention, is a forbidden ex post analysis. The applicant submits that it is

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Application No. 09/638,017

69
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1 impermissible to use the claimed invention as an instruction manual or template to piece
2 together the teachings of the prior art so that the claimed invention is rendered obvious.
3 The references simply do not teach to combine the requisite features of your applicant's
4 invention. "Before the PTO may combine the disclosures of two or more prior art
5 references in order to establish Prima Facie obviousness, there must be some suggestion
6 for doing so, found either in the references themselves or in the knowledge generally
7 available to one of ordinary skill in the art.(IN RE Jones, 958 F.2d 347, 351, 21 USPQ2d
8 1941, 1943-44 (Fed. Cir. 1992)). "Evidence of a suggestion, teaching, or motivation to
9 combine prior art references may flow, inter alia, from the references themselves, the
10 knowledge of one of ordinary skill in the art, or from the nature of the problem to be
11 solved. See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. Although a reference need
12 not expressly teach that the disclosure contained therein should be combined with another,
13 see Motorola, Inc. v. Interdigital Tech. Corp., 121 F.3d 1461, 1472, 43 USPQ2d 1481,
14 1489 (Fed. Cir. 1997), the showing of combinability, in whatever form, must nevertheless
15 be "clear and particular." Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617." Winner
16 International Royalty Corporation v. Ching-Rong Wang, 202 F.3d 1340(CAFC 2000).

17 The applicant respectfully requests the Examiner to withdraw the 103 rejections
18 in light of the argument, amendments and responses submitted and to allow the claims as
19 amended.

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SUMMARY OF AMENDMENTS AND REMARKS

24

The applicant has submitted a Petition for Revival under 37 CFR 1.137(b) and

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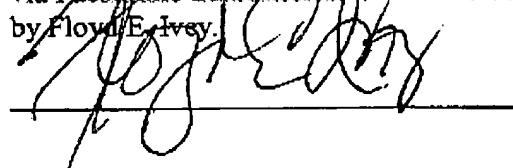
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209
this Amendment and Response to the Office Action of December 5, ~~2005~~. Accordingly,
the applicant has made a good faith attempt to place the application in condition to be
returned to examination. Your applicant requests the Office of Petitions to return this
application to prosecution and to withdraw the said objections and rejections and to allow
the claims as set forth.

Respectfully submitted,

FLOYD E. IVEY

Registration No. 35,552

Telephone No. (509) 735-3581

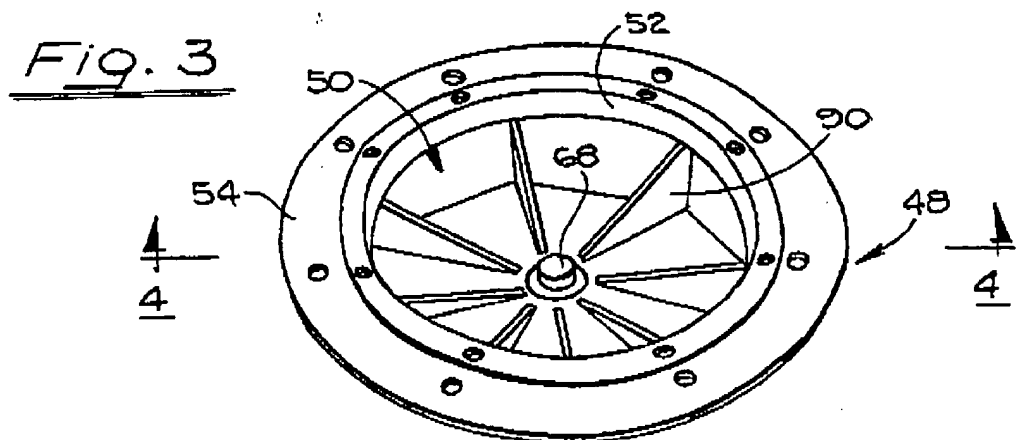
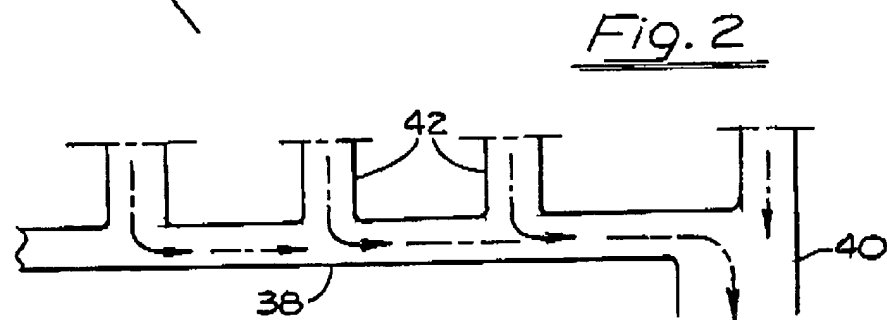
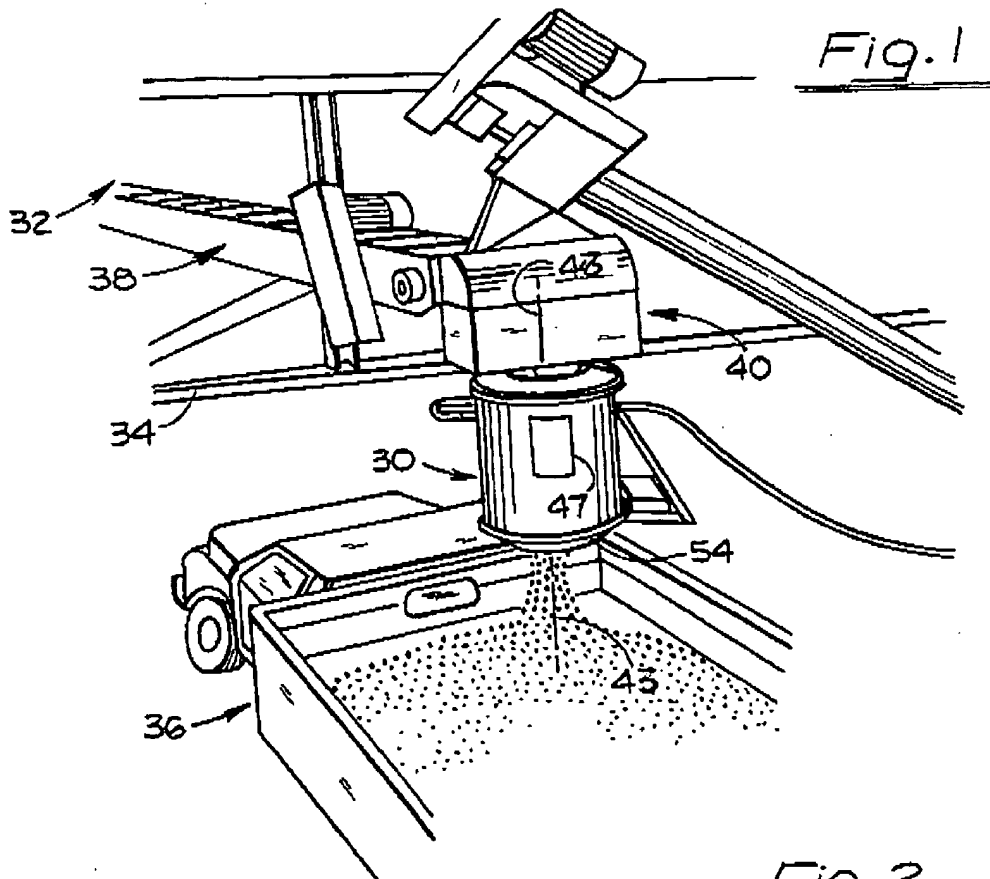
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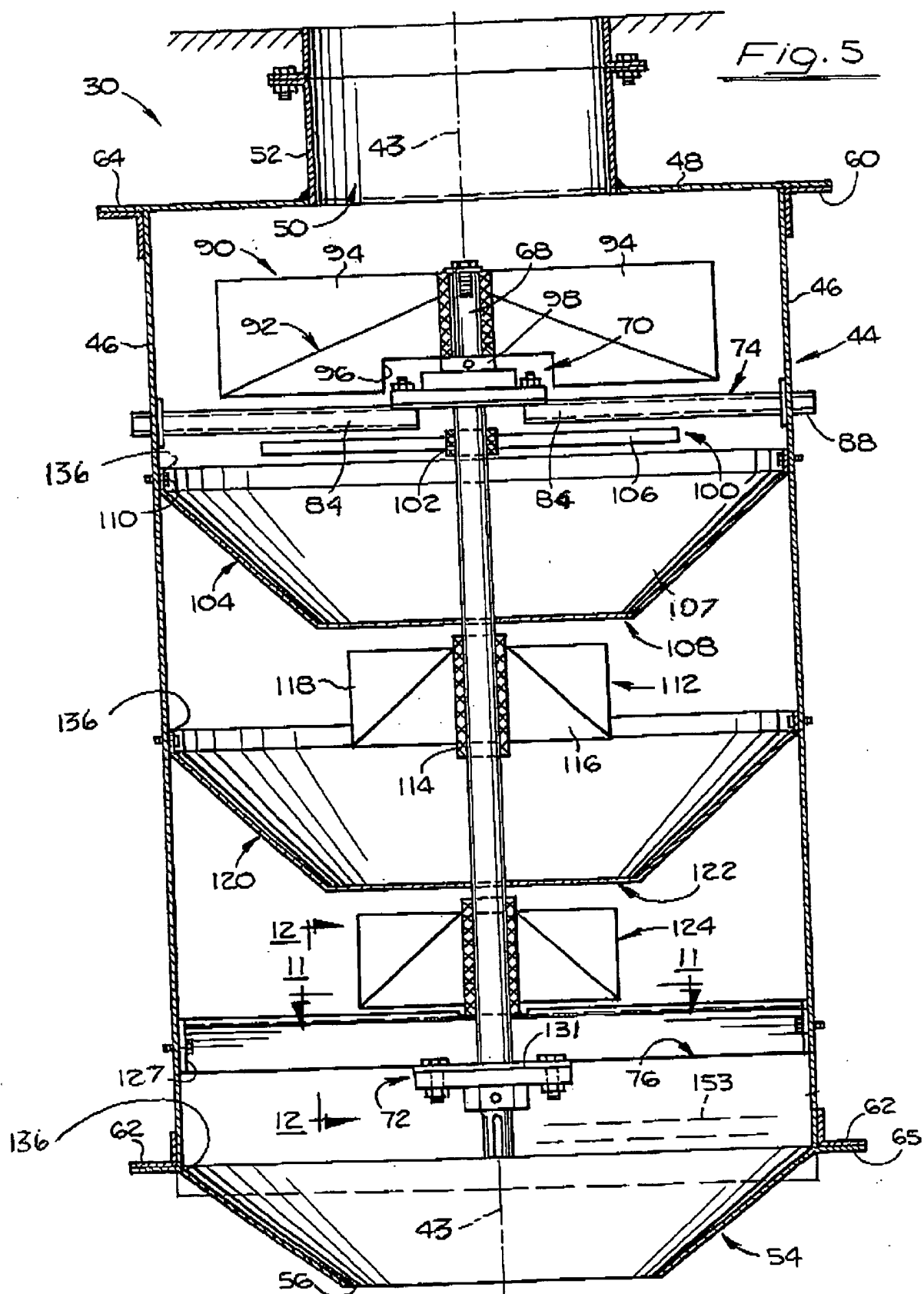
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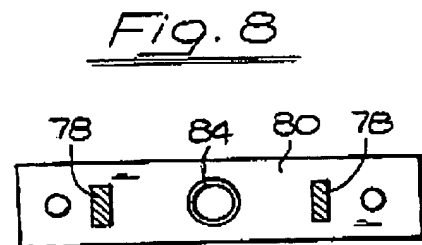
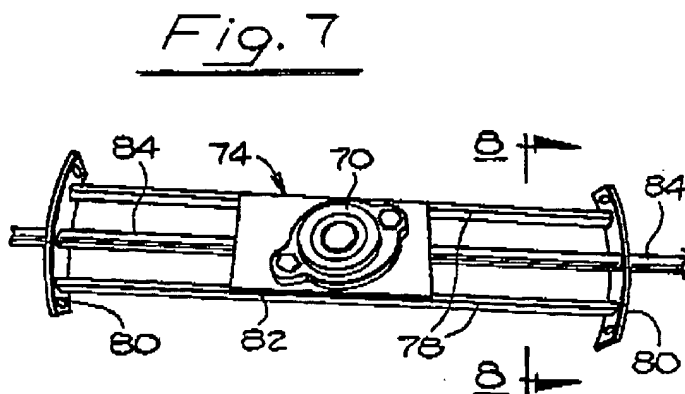
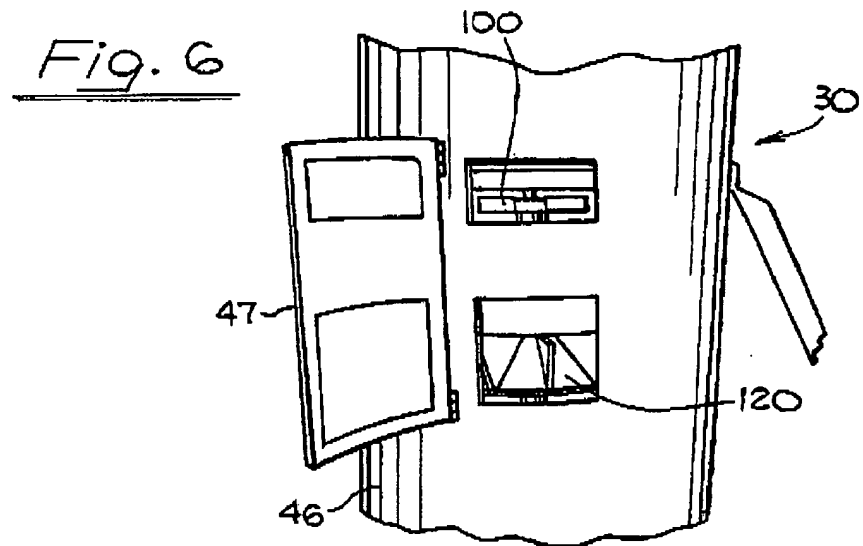
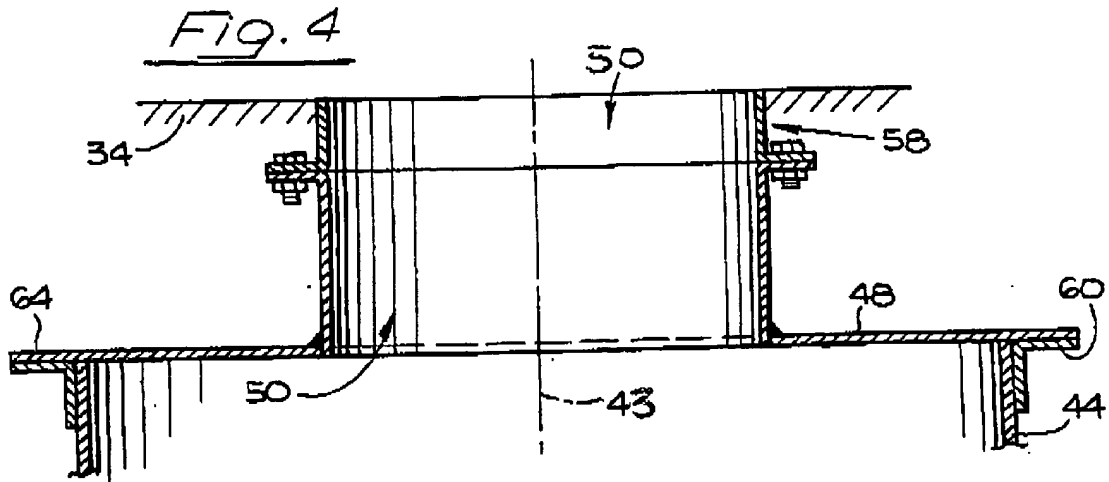
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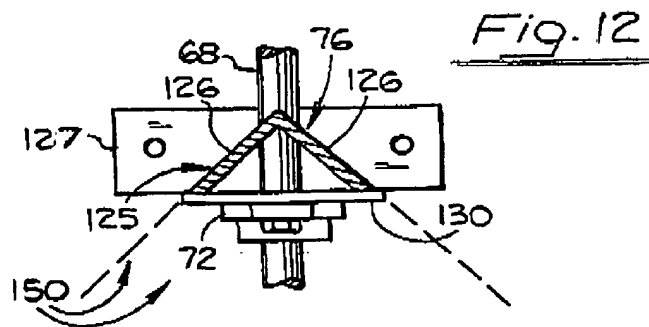
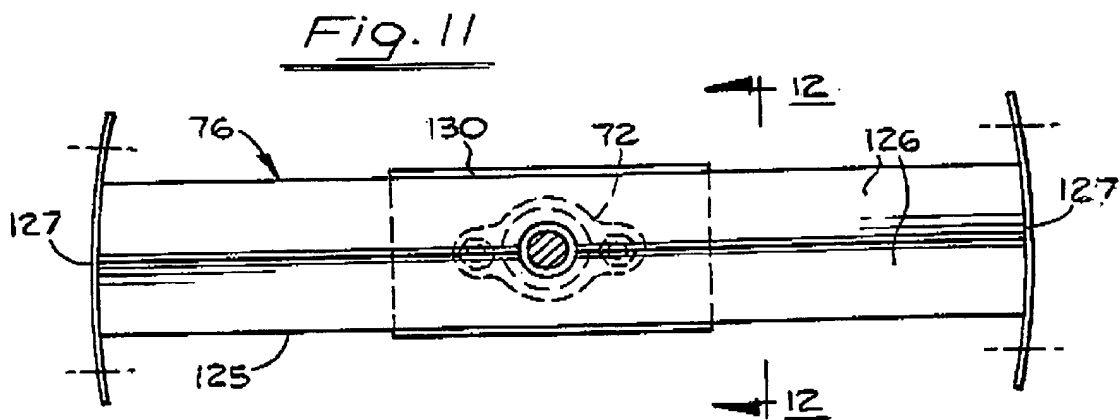
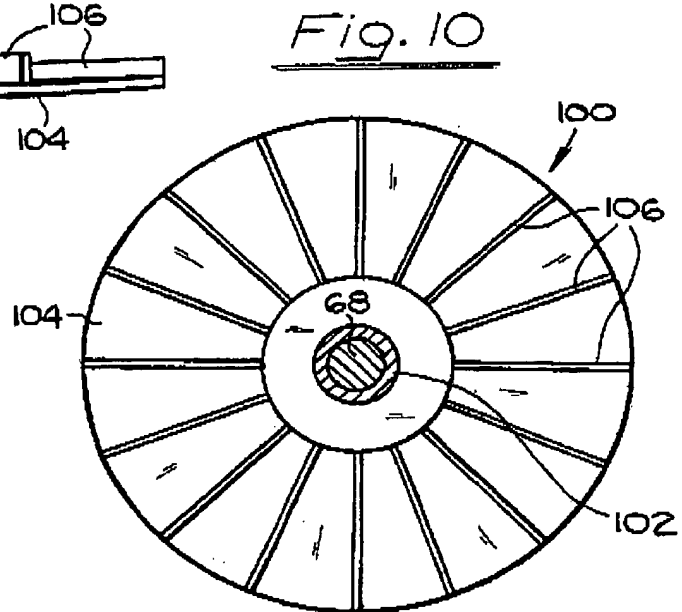
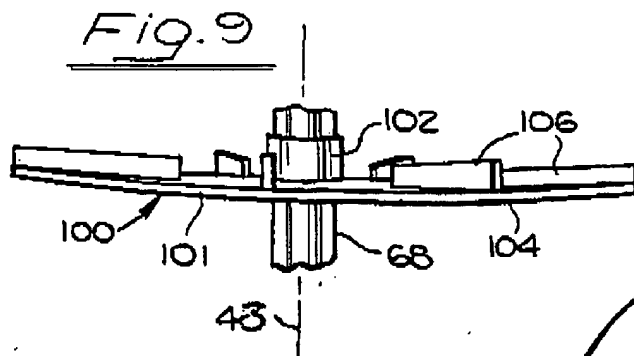


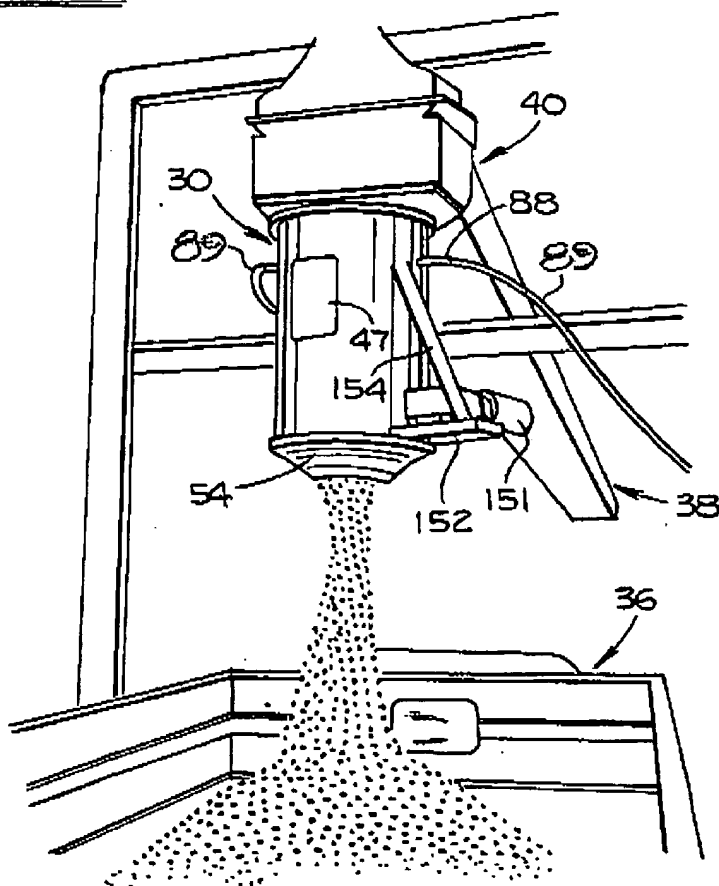
Fig. 13

Fig. 14